

ABSTRACT

Title of thesis: THE USUAL SUSPECTS: EXAMINING
THE ROLE OF OFFENSE-SPECIFIC
TYPESCRIPTS IN PROSECUTORIAL
DECISION-MAKING

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Prior research has demonstrated that the relationship between defendant characteristics and prosecutorial decision-making is nuanced and often difficult to detect. A complete understanding of this relationship requires a holistic approach examining multiple decision points and a sound theoretical foundation. Using data from the New York County District Attorney's Office, this study investigates disparities in case outcomes across several decision-making stages. Informed by a theoretical perspective that combines focal concerns and typescripts theories, I argue that during the course of their work, prosecutors develop impressions of archetypal offenders for individual offense types. Decisions made throughout case processing are subsequently influenced by the degree to which the defendant matches the description of the archetypal offender associated with the charged offense. Findings provide mixed support for the hypotheses put forth in the study. Results are discussed as they relate to theories of courtroom dynamics, prosecutorial decision-making, and biases in case processing.

THE USUAL SUSPECTS: EXAMINING THE ROLE OF OFFENSE-SPECIFIC
TYPESCRIPTS IN PROSECUTORIAL DECISION-MAKING

By

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Chapter 1: Introduction

There is a long history of researchers investigating the influence of extralegal factors in criminal justice decision-making. Defendant race and gender are some of the most salient factors, with these characteristics being shown to have varying effects across multiple decision points in the American criminal justice system. The race or gender of a suspected offender can affect decisions involving arrest (Black and Reiss, 1970; Kochel, Wilson, and Mastrofski, 2011), pretrial detention (Chiricos and Bales, 1991; Demuth, 2003; Spohn, 2009), formal charging (Spohn, Gruhl, and Welch, 1987; Henning and Feder, 2005), and sentencing (Steffensmeier, Kramer, and Ulmer, 1998; Johnson, 2003; Johnson and Betsinger, 2009). Further, interaction effects of these extralegal variables often reveal disparate outcomes even when their direct effects do not (Steffensmeier et al., 1998). It is often necessary to analyze variables such as race and gender in conjunction with one another in order to reveal undue influence on case processing outcomes. In addition to the interaction of factors such as race and gender, the effects of these extralegal variables on case processing outcomes can also depend on case factors such as criminal history (Steffensmeier et al., 1998) and crime type (Shermer and Johnson, 2010). Stereotypical notions of dangerousness and culpability are not distributed evenly across all members of a race or gender, and instead are more salient for certain subgroups that are defined by specific combinations of legal and extralegal characteristics.

Long considered the black box of the criminal justice system, the introduction of new sources of data related to prosecution has begun to allow researchers to shed light on the mechanisms influencing prosecutorial decision-making. While the vast majority of research investigating decision-making within the court system has focused on sentencing (e.g. Steffensmeier et al., 1998; Johnson, 2003; Steen, Engen, and Gainey, 2005), studies investigating the role of race and gender have shown that prosecutorial decision-making is not immune to the influence of extralegal factors (Albonetti and Hepburn, 1996; Kutateladze et al., 2014). This is of concern given the prosecutor's involvement and discretion in multiple case processing stages. Indeed, prosecutors are often involved in the initial decision to prosecute, the filing of criminal charges, charge reductions, and the plea-bargaining process (Shermer and Johnson, 2010). Scholars have provided evidence that the race of the defendant affects decisions made by prosecutors at various points in case processing (Kutateladze, 2018). Similarly, the gender of the defendant has been found to affect prosecutorial decision-making (Spohn, Gruhl, Welch, 1987; Shermer and Johnson, 2010). Evidence that the race of the victim affects decisions such as whether to seek the death penalty has also been provided by researchers (Paternoster, 1984; Paternoster and Brame, 2008). In contrast, other studies have found no direct effects of race on prosecutorial decision-making and case processing outcomes (Bishop and Frazier, 1984; Albonetti, 1992; Spears and Spohn, 1997; Shermer and Johnson, 2010).

Given the complex nature of prosecutorial decision-making, it is necessary to examine how certain constellations of legal and extralegal characteristics might

differentially affect case outcomes (Steffensmeier et al., 1998; Wooldredge, 2012). The literature on case processing suggests that defendant race and gender often exert influence on case outcomes independently, but such a singular focus fails to capture the entire picture. The effects of defendant race and gender are likely conditioned by certain key legal variables such as criminal history and defense counsel. Indeed, Kurlychek and Johnson (2019: 299) argue that “both prosecutors’ charging decisions and judicial sentencing decisions are explicitly tied to assessments of prior criminal history.” Criminal history is used by criminal justice actors such as the prosecutor to evaluate the blameworthiness of the defendant and his or her risk of reoffending (Steffensmeier et al., 1998). Additionally, the type of defense counsel is a key legal variable for two reasons. It is often used as a proxy for socioeconomic status (Kutateladze et al., 2014), because defendants represented by private attorneys tend to have greater socioeconomic resources. Additionally, the public defender and prosecutor are part of the same courtroom workgroup and develop close working relationships (Eisenstein and Jacob, 1977; Sudnow, 1965). These relationships likely result in greater routinization of case processing and plea bargain negotiations when compared to cases involving private defense attorneys, who do not have the same working relationships with prosecutors.

The literature provides evidence that defendant race, gender, criminal history, and defense counsel are important variables that influence the manner in which a given criminal case is processed. In order to fully understand the influence of these variables, it is important to examine how they interact with one

another and how they interact with the offense the defendant is accused of committing. A common critique of the literature on prosecution is that studies have often focused on a single crime type (Kutateladze, 2018). It is important to examine how decision-making might vary across different offenses because the effects of race and gender could be conditioned by the offense charged.

Theoretically, disadvantages for certain racial and gender groups may be more pronounced when the offense aligns with negative stereotypes associated with that group. In contrast, restricting analyses to a singular crime type has implications for external validity (Kutateladze et al., 2014); it hinders generalizability because charging practices likely vary across offense types. Furthermore, while race and ethnicity might not exert a direct influence on outcomes such as charge reductions, this might change when disaggregating by offense type (Shermer and Johnson, 2010).

Importantly, because the prosecutor is involved in multiple stages of case processing, he or she is in a unique position of power over the outcome of criminal cases (Davis, 2007). Prosecutors enjoy wide discretion in multiple consequential case processing decisions (Forst, 2010; Pfaff, 2017; Kurlychek and Johnson, 2019). Discretion is an important component of the prosecutor's role and is needed so that he or she can weigh factors unique to the case at hand and provide individualized justice. A complete lack of discretionary power when making case processing decisions would require prosecutors to treat each criminal case exactly the same. Such inflexibility would prevent prosecutors from taking into account factors such as strength of evidence, a victim's attitude towards

prosecution, and the defendant's prior record (Davis, 2007). However, broad discretion across multiple decision points also risks the introduction of bias into prosecutorial decision-making.

Previous research that has analyzed multiple stages in case processing has provided evidence of decisions made in early stages affecting the outcomes at later stages, such as the final sentencing decision (Wooldredge, 2012; Sutton, 2013; Kutateladze et al., 2014). In addition, prosecutorial discretion may be greater at certain stages, and thus be more vulnerable to the influence of biases, compared to others. Therefore, the prosecutor's involvement at each of these decision points is important to consider when examining the effects of extralegal factors on case processing outcomes. When reviewing the extant literature, it is made clear that researchers need to examine constellations of legal and extralegal variables across multiple decision points. Accordingly, proper empirical investigation of prosecutorial decision-making requires both a theoretical and methodological framework that allows researchers to consider how decisions might be influenced by varying combinations of legal and extralegal factors across different decision points.

Prosecutorial decision-making is a complex subject that presents a host of empirical issues for researchers. Currently, the extant research has not adequately examined the interplay of key legal and extralegal factors, and how they may combine to impact the decision-making of prosecutors across multiple stages in case processing. This study aims to provide new insights into the complex nature of prosecutorial decision-making by examining how defendant race and gender,

combined with criminal history and type of legal defense, interact with offense type to affect case processing outcomes at multiple decision points. Using a framework that incorporates political science research on the courtroom workgroup with focal concerns and typescripts theories, the current study examined case processing outcomes across multiple crime types in order to test whether prosecutors construct stereotypical descriptions of typical offenders in ways that shape important charging outcomes, including case dismissal, plea bargaining, and final case dispositions.

Chapter 2: Literature Review

The prosecutor is in a unique place in both the criminal justice system and the field of criminology. Within the criminal justice system, the prosecutor is granted discretion and control over multiple decision points in case processing, which culminates in a level of power not experienced by other actors (Worrall, 2008). Within the field of criminology, the prosecutor remains relatively understudied when compared to other criminal justice actors such as police or judges. This combination of wide discretion and lack of empirical analysis leaves prosecution vulnerable to patterns of inequity in decision-making that go unnoticed and unchecked. This chapter aims to highlight the need for more research on prosecutorial decision-making by explaining both the role of the prosecutor within the criminal justice system, and the state of empirical research on prosecution. The first subsection is comprised of literature largely from legal scholars outlining the role and function of the prosecutor, while the second subsection reviews the social scientific literature on this courtroom actor.

An Overview of the American Prosecutor

Unlike most other components of the American criminal justice system, the role of the prosecutor was not imported from European systems such as English common law (Walker, 1998). Instead, the American prosecutor largely evolved independent of influence from other systems (Jacoby, 1980). Over the course of American history, the prosecutor transitioned from a largely inconsequential office to a highly influential political figure. This transition occurred gradually as the criminal justice system was continually reformed.

Successive movements targeting various aspects of the system resulted in public prosecutions, the democratization of the prosecutor through elections and establishment of local offices, and the prosecutor's shift from judicial to executive branch of government (Jacoby, 1980). In the course of American history, criminal justice reforms have rarely targeted prosecutors specifically (Pfaff, 2017), but they have nonetheless impacted the prosecutor's role within the system (Worrall, 2008). It is important to understand how prosecutors came to occupy such an influential position in order to gain insight into the extent of their centrality to the current criminal justice system.

While prosecutors have existed since the founding of the United States, their role within the criminal justice system has evolved over time. During both colonial and post-revolution America, prosecutions were primarily private affairs. Public prosecutors existed, but it was much more common for individual citizens to file charges against their fellow citizens with the help of a private attorney (Walker, 1998; Pfaff, 2017). However, as the country grew during the 19th century, so too did the need for a more bureaucratic and modern criminal justice system. A push for the democratization of the criminal justice system gained significant momentum and major reforms were passed during the Jackson administration (Worrall, 2008; Pfaff, 2017). Laws targeting corruption were passed to require public election rather than appointment of prosecutors, and over time private prosecutions were eliminated (Davis, 2007; Pfaff, 2017).

The reforms that intended to create a more modern and professional criminal justice system steadily increased the power and centrality of the

prosecutor, a pattern that would continue through to the 21st century (Walker, 1998; Worrall, 2008). The function of the public prosecutor fundamentally changed, and the office became an important public official with considerable political power. Further increasing the prosecutor's role in criminal case processing were multiple landmark Supreme Court cases that granted additional rights to criminal defendants. Decisions in cases such as *Gideon v. Wainwright* (1963) and *Miranda v. Arizona* (1966) extended a defendant's right to counsel, requiring the presence of an attorney during criminal trials and police interrogations (Worrall, 2008). The required presence of counsel compelled prosecutors to attend proceedings and deal with defense attorneys at stages where they previously would not have been present (Worrall, 2008).

The American prosecutor today assumes a central role in deciding how a criminal case is pursued, but this has not always been true. Instead, the prosecutor's role within the criminal justice system has become increasingly centralized through years of reform (Worrall, 2008). Furthermore, prosecutors' current position of power extends far past control over criminal cases. As Jacoby (1980, p. 7) stated "The prosecutor's influence spans both the executive and the judicial branches of government. His authority is locally derived, yet his power affects the state and the national levels." Prosecutors are in a unique position of occupational and political power that allows them to not only hold sway over the flow of criminal cases and execution of the law, but also influence the politicians who pass and change criminal laws.

The effects of these reforms culminated in the creation of the modern American prosecutor. Today American prosecutors are unique compared to both their domestic and international colleagues in the criminal justice system (Worrall, 2008). Perhaps the greatest distinction between prosecutors in America and those abroad is their status as elected officials, something that only exists in the American system (Ellis, 2011). Prosecutors are elected in forty-six states, with Alaska, Connecticut, Delaware, and New Jersey being the four that require the appointment of prosecutors (Pfaff, 2017).¹ Although in most jurisdictions local district attorneys are elected to their position, the assistant attorneys that work in the office and often prosecute cases are not (Worrall, 2008). This convoluted system of elections and appointments has made it difficult for legislators to pass large scale structural reforms. Additionally, a lack of centralized organization of prosecution in America inhibits the systematic collection of data on case processing and prosecutorial decision-making. The absence of a national system of state prosecutors, or even standardized structure of prosecution, effectively insulates prosecutors from large scale reform efforts and empirical scrutiny.

The Prosecutor's Place within the Courtroom Workgroup

Prosecutors typically receive criminal cases from police and must evaluate the evidence provided to them in order determine whether prosecuting the case is a worthwhile endeavor. If prosecutors decide that the evidence against a defendant is sufficient to warrant prosecution, they must also decide which criminal charges to formally file. The decision to drop the charges outright or to

¹ At the national level, federal prosecutors (U.S. Attorneys and the Attorney General), are placed in their positions via presidential appointment.

proceed with prosecution is primarily driven by the strength of evidence against the defendant, but it can also be influenced by external factors, both legal and extralegal (Forst, 2011; Frederick and Stemen, 2012). This is true throughout the entirety of case-processing. While legal factors such as evidence and criminal history primarily determine the trajectory of a criminal case, extralegal factors such as defendant race and courtroom norms exert influence on how a criminal case is processed (Frederick and Stemen, 2012; Forst, 2011). Gaining a deeper insight into the external factors that influence prosecutorial decision-making is necessary to better understand the role and power of the prosecutor in the American criminal justice system.

The prosecutor operates within a group of courtroom actors that develop relationships and norms that dictate how criminal cases are processed (Eisenstein et al. 1988). It is often a key goal of the entire courtroom workgroup to avoid having a criminal case advance to trial. Instead, efficiently disposing of cases in a timely manner is seen as necessary to maintain a steady workload (Steen et al., 2005). Prosecutors, defense attorneys, and judges alike view the criminal trial as a lengthy and burdensome process that interferes with the efficient processing of criminal cases. It is perceived as being in the best interest of the courtroom to drop weaker cases outright and seek a guilty plea for cases deemed worthy of prosecution. Of course, there are occasional exceptions to this rule, and prosecutors have been found to accept weak cases due to pressure from other criminal justice actors (Frederick & Stemen, 2012). For most cases, however, the

avoidance of trial is preferable for the prosecutor, public defender, and judge and tactics are developed within the courtroom to achieve this goal.

Pretrial Responsibilities of the Prosecutor

Charging is arguably the stage in case processing where the prosecutor exerts the most influence on the outcome of a criminal case. This is due to unilateral control, lack of judicial oversight, and the effect that original charges have on the trajectory of the case. McCoy (2005) argues that in a system where judicial discretion is minimized by mandatory sentences and plea deals are encouraged, the sentence is virtually decided by the prosecutor's charging decision. While not the only method of charge origination, most criminal charges in the U.S. are initiated by the police via arrest, summons, or desk appearance ticket (Kutateladze, 2018). It is after this point that the prosecutor first assumes a role in the processing of a criminal case. During this stage, often referred to as case screening, the prosecutor is tasked with deciding whether to formally file charges against an individual or drop the case (Davis, 2007; Kutateladze, 2018). The prosecutor may follow the charge or charges originally assigned by the police or alter their categorization of the incident. There is no law that requires a prosecutor to charge an individual who has been arrested, nor is there a law or rigid system that dictates which charges a prosecutor should file (Davis, 2007).

Case screening is when a case officially enters the criminal justice system and charges are initially filed. Research shows that early decision-points such as charging can have large impacts on the disposition and sentencing of criminal cases (Shermer and Johnson, 2010; Wooldredge, 2012; Kutateladze et al., 2014).

As is the case with much of the decision points under the prosecutor's control, case screening is not uniform. Case screening procedure, as well as offense classifications, vary across jurisdictions. For example, Forst (2011) argues that prosecutor offices can either focus on achieving quality convictions through a more selective screening stage, or simply more convictions through a less selective screening process. Because there is no constitutional standard for prosecutorial rules and standards, which tactic an individual office decides to take is at their discretion (Forst, 2011).

In misdemeanor cases, as well as with felonies in courts that do not use a grand jury system, the filing of charges is left entirely up to the prosecutor's discretion (Davis, 2007). In most jurisdictions, a grand jury is used in order to file charges for felony cases. In a grand jury hearing, the prosecutor must convince a jury that there is probable cause to believe a crime has been committed in order for an indictment to be filed. While the purpose of the grand jury is to provide a democratic check against unjust arrests, in reality it is rare that the grand jury does not find probable cause. Prosecutors are given the keys to the grand jury hearing and are typically able to steer it in the direction they want. The prosecutor decides which evidence to present, as well as which witnesses will be called. In both cases that require a grand jury and those that do not, the prosecutor is firmly in control.

Highlighting the unilateral control that prosecutors have during case screening is not to suggest that they mindlessly decide which charges to file for each case. In fact, despite a lack of explicit rules governing prosecutorial decision-making during case screening, previous research has shown that

decisions made by prosecutors during this phase are largely driven by the strength of evidence and seriousness of the offense (Forst, 2011; Frederick and Stemen, 2012). However, the lack of constraints on prosecutorial decision-making at this stage leave room for other factors, both legal and extralegal, to affect charging outcomes (Albonetti, 1992; Ulmer, Kurlychek, and Kramer, 2003; Shermer and Johnson, 2010; Kutateladze, 2018). In addition, decisions and policies made by prosecutors have downstream effects. For example, the decision to focus on either quality convictions or a greater number of convictions has implications for plea bargaining rates (Forst, 2011). Forst (2011) argues that offices with a focus on quantity of convictions and a less-selective screening process tend to have greater plea-to-trial ratios. This downstream effect highlights the cause for concern regarding extralegal influence on plea bargaining, which can occur at any time between filing and conviction (Davis, 2007).

Plea Bargaining

Plea bargaining can be defined as the process during which a defendant decides to forgo his or her constitutional right to trial and plead guilty in exchange for an implicit or explicit benefit, usually in the form of reduced charges or a favorable sentencing recommendation (Davis, 2007). Previously reserved for low-level crimes with a low likelihood of custodial sentences, plea bargaining has become ubiquitous in the American criminal justice system and the primary disposition of criminal cases (McCoy, 2005). The increase in pleas as a share of criminal case dispositions over the past few decades coincides with sentencing reforms and an increase in prosecutorial power (McCoy, 2005; Johnson, King,

and Spohn, 2016; Johnson, 2019). While plea bargaining can increase efficient processing of cases and appear to benefit all parties involved (Johnson, 2019), it is still a question whether the system is able to consistently provide just outcomes for defendants when it so heavily relies on the forfeiture of a defendant's right to trial in order to function.

Plea bargaining is an informal process involving negotiations between the prosecution and the defense that occurs outside of the courtroom. Unlike case screening, plea bargaining is not a single stage in case-processing but can occur at any time between case screening and final disposition, even after a trial has commenced (Davis, 2007). In practice, however, most pleas are offered at the arraignment stage, where defendants are notified of the formal charges that have been filed against them (Kutateladze, 2018). Similar to case screening, this process is not subject to any institutionalized protocols, besides those mandated by the chief prosecutor (Frederick and Stemen, 2012). Although plea bargaining is conducted on an individual basis, "going rates" for what discounts are acceptable for a given offense are established over time through repeated negotiations (Sudnow, 1965; McCoy, 2005). Such rates can be reinforced through the office policies and philosophy established by the head prosecutor. These office policies exert a significant amount of influence on how prosecutors negotiate with defense attorneys and what deals are perceived as acceptable (Forst, 2011). They also influence the trajectory of cases and a prosecutor office's plea-to-trial ratio. This ratio will be affected by whether the office prioritizes quality or quantity of convictions. Offices prioritizing quantity will encourage

striking plea deals, while offices that stress quality convictions will likely see more cases go to trial (Forst, 2011). More selective case screening frees up more resources that can then be used to bring cases to trial (Worral, 2008).

An increase in plea bargains, and decrease in trials, reduces financial costs for all parties involved (Johnson et al., 2016). Many criticisms of the criminal justice system often cite the heavy workloads of defense attorneys, but prosecutors are often weighed down by large caseloads as well (Kohler-Hausmann, 2018). Judges are able to avoid time-intensive adjudication processes and avoid backlogs on court dockets when more cases are pled out (Eisenstein, Flemming, and Nardulli, 1988). Defendants benefit by receiving a certain, and oftentimes more lenient, sentence (Johnson, 2019). Pleading guilty can also prove financially beneficial for defendants. In misdemeanor cases, the financial costs of fighting the charges brought against an individual often outweigh the cost of plea deals offered early on in case processing (Feeley, 1979; Kohler-Hausmann, 2018). As a result, all actors are effectively incentivized to encourage plea deals, even though this might not be in the best interest of the defendant (McCoy, 2005). This incentivization in turn creates an advantage for prosecutors. In a system that encourages the proliferation of guilty pleas, the prosecutor starts negotiations from a position of great strength. This position of strength is even more solidified when considering the trial tax, or increased punishment experienced by defendants convicted at trial compared to those who pled guilty to the same crime.

The notion that defendants convicted at trial are subject to harsher penalties is well-established (Johnson, 2019). This phenomenon has been shown

to affect decisions made by defendants. When a defendant perceives the likelihood of conviction to be high and the projected sentence to be long, the defendant will be more likely to plead guilty (Kramer, Wolbransky, and Heilbrun, 2007). Sentencing reforms such as mandatory minimums and presumptive guidelines have effectively provided prosecutors with bargaining chips with which to threaten defendants (Pfaff, 2017). As McCoy stated, “the ‘going rate’ has become so inflated for sentences after trial conviction that defendants are, in effect, coerced into guilty pleas” (2005: p. 87).

The prevalence of plea bargaining in the American criminal justice system translates to a system of punishment fundamentally shaped by plea outcomes. The American criminal justice system is the most expansive in the world, processing and incarcerating more individuals than any other country (Pfaff, 2017). In today’s system, plea bargains are needed in order to maintain the flow of criminal cases. Despite the system’s heavy reliance on plea bargains, the operation and effects of plea bargaining are still yet to be fully understood. This lack of knowledge is due in part to a lack of external oversight and limited data collection on prosecutors.

The State of Prosecutorial Oversight

For all of the discretion that prosecutors have over various points in case processing, their actions are typically not subject to independent oversight. While formalized policies have been developed to safeguard against police and judicial misconduct, prosecutors have largely avoided such reforms (Forst, 2011). For example, an attempt to create an independent commission on prosecutorial

conduct in New York State which would have had the power to investigate claims of misconduct and issue penalties to prosecutors whom the commission felt had acted inappropriately or illegally was recently struck down by a state supreme court justice, who ruled it violated the State's Constitution (Soares v State of New York, 2019). In place of such reforms, prosecutorial oversight is instead left to the prosecutors themselves (Davis, 2007).

The lack of external prosecutorial oversight is an issue for researchers and policy makers alike, as it insulates prosecutors from empirical examination and independent investigation of possible cases of misconduct. Without independent evaluation, it is difficult for prosecutors and researchers to determine if criminal cases are being processed equitably. As Davis (2007) argues, "when there is no effective system of public accountability, it is difficult to engage in honest and meaningful self-critique." For academics, the absence of quality prosecution data allows for the continued existence of large gaps in the criminological literature. Independent analyses of the practices and procedure of this key actor are needed to fully understand issues such as mass incarceration and disparate sentencing outcomes. While legal research helps to illustrate the role of the prosecutor within the American criminal justice system, social science research is needed to better understand the function and consequences of the prosecutor's decision-making. The next section provides a review of the extant social science literature on prosecution and prosecutorial decision-making.

Empirical Research on Prosecution

While the bulk of research on the influence of race and gender on punishment has focused on the final sentencing decision (Miethe and Moore, 1985; Steffensmeier, Ulmer, and Kramer, 1998; Johnson, 2003; Steen et al., 2005), researchers have provided informative analyses on prosecution reaching back decades (Albonetti, 1987; Albonetti, 1992; Spears and Spohn, 1997; Beichner and Spohn, 2005). Although these studies added important insights to the literature, access to prosecutorial data has been notoriously difficult to obtain (Shermer and Johnson, 2010), and early studies are the exceptions that prove the rule. Moreover, the scope of early studies was often limited due to the scarcity of prosecutorial data. However, in recent years the bulwark preventing empirical analysis of prosecution has been weakened by public pressure and progressive-minded prosecutors. There has been an increase in research on the prosecutor as new, richer sources of data have become available and the power possessed by the prosecutor over criminal cases has been increasingly recognized (Johnson, King, and Spohn, 2016). Informative studies have shown that while legal factors tend to have the greatest impact on decision-making, prosecutors are nonetheless susceptible to the undue influence of extralegal factors when making charging decisions (Shermer & Johnson, 2010; Sommers et al., 2014; Kutateladze et al., 2014; Kutateladze, 2018). The prosecutor has been found to be influenced by the race and gender of the defendant (Shermer and Johnson, 2010; Kutateladze, 2018) as well as the victim (Spohn et al., 2001). The degree to which prosecutors are influenced by the defendant race and gender on prosecutorial decision-making is not always uniform across crime type. Instead, the magnitude of their influence

can depend on the offense the defendant is charged with (Shermer and Johnson, 2010). Additionally, a growing literature on prosecutorial decision-making stresses the importance of evaluating prosecutorial decision-making at multiple stages of case processing (Shermer and Johnson 2010; Frederick and Stemen, 2012; Ulmer, 2012; Sutton, 2013; Kutateladze et al., 2016; Kutateladze, 2018).

Extralegal Influence on Prosecutorial Decision-Making

Early work investigating the role of extralegal influence on prosecutorial decision-making tended to focus on a single point in case processing or a single crime type, and the results of different studies often contradicted one another. For example, in a study of 300 homicides cases eligible for the death penalty, Paternoster (1984) found that the race of the victim significantly influenced the prosecutor's decision to seek the death penalty. In addition, the death penalty was most likely to be sought in cases involving black defendants accused of killing white victims, compared to other racial dyads (Paternoster, 1984). In a later study, Albonetti (1987) analyzed 6,014 felony cases screened by the U.S. Attorney's office in Washington DC and failed to find evidence of extralegal influence on prosecutorial decision-making at this stage. Albonetti (1987) found that the decision to prosecute was primarily driven by legally relevant characteristics such as the presence of exculpatory evidence and the use of a weapon. Race and gender did not have statistically significant effects on the probability of prosecution (Albonetti, 1987). In the same year, Spohn and colleagues (1987) conducted a study using a sample of 33,000 cases in Los Angeles in which the defendant was charged with a single crime. Like Albonetti, Spohn and colleagues (1987)

investigated the role of defendant race and gender on the prosecutor's decision to accept or dismiss the criminal charge. Unlike in Albonetti's study, females were more likely to have the charge against them rejected compared to males, and this pattern held for White, Black, and Hispanic defendants (Spohn et al., 1987).

Further, Hispanic and Black males were most likely to be fully prosecuted, compared to white males and all female ethnic groups (Spohn et al., 1987). In a later analysis of case screening, Albonetti (1992) examined 404 cases involving burglary and robbery charges processed in Jacksonville, FL between 1979 and 1980. Race and gender of the defendant were not found to significantly affect the decision to reduce charges at the screening stage. She found, however, that younger defendants were less likely to have their charges reduced than older ones (1992).

As researchers continued to probe the effects of extralegal characteristics on prosecutorial decision-making, analyses continued to return mixed results, with some providing evidence for the undue influence of variables such as defendant race and gender, while others did not. Albonetti and Hepburn (1996) conducted a study of pre-filed deferred prosecution program started by the Maricopa County, Arizona Attorney's Office. Within this program, felony drug cases could be deferred to treatment programs rather than full prosecution at case screening. The researchers found that female, as well as younger defendants, were more likely to be diverted from prosecution and into treatment programs when compared to male and older defendants (Albonetti and Hepburn, 1996). They did not find that minority status of the defendant, defined as being African American

or Hispanic, directly affected the decision to defer a case to drug treatment. However, Albonetti and Hepburn (1996) did find evidence of an interaction effect between having a prior record and being African American or Hispanic, suggesting that understanding how prosecutorial biases manifest themselves requires complex modeling. In contrast, a study of sexual assault cases prosecuted in Detroit, Michigan, conducted by Spears and Spohn (1997) found that no extralegal characteristics of the defendant affected charging decisions. Instead, victim characteristics were found to be the only significant predictors of whether charges were brought in a case (Spears and Spohn, 1997).

More recently, researchers reported a lack of support for extralegal influence on prosecutorial decision-making after examining 526 cases that were initially assigned a forceable rape charge by police in Kansas City and Philadelphia. Holleran and colleagues (2010) found that neither the race of the suspect nor the victim had a significant effect on the prosecutor's decision-making at screening. However, evidence for racial disparities in plea-bargaining outcomes was found in a study of misdemeanor marijuana cases prosecuted in Manhattan, New York (Kutateladze et al., 2016). The researchers found that Black and Latino defendants were less likely to receive plea deals that included a charge reduction and were more likely to receive a custodial plea when compared to White defendants (Kutateladze et al., 2016). Interestingly, Asian defendants received more favorable plea outcomes compared to all racial groups, including Whites (Kutateladze et al., 2016).

Results from extant literature on prosecution demonstrate that the role of extralegal characteristics in prosecutorial decision-making is far from completely understood. There has been a great deal of contradictory results in this area of research. It is likely that a portion of these contradictions can be blamed on limited data and scope. For example, a weakness in many studies on prosecutorial decision-making is the focus on a single crime type. Research only examining a single crime type may fail to identify how the influence of certain extralegal variables such as defendant race or gender may be conditioned by the type of offense. Furthermore, many early studies focused on unique offenses such as sexual assault (Spears and Spohn, 1997; Spohn et al., 2001; Beichner and Spohn, 2005) or cases eligible for the death penalty (Baldus, Pulaski, and Woodworth, 1983; Paternoster, 1984; Sorensen and Wallace, 1999; Paternoster and Brame, 2008). Unique offense types such as these are likely handled differently by prosecutors compared to other crime types.

It is also important to investigate prosecutorial decision-making at more than one decision point, as outcomes at certain stages in punishment do not occur in a vacuum. Focusing on a singular decision point, such as case screening, largely ignores the connections between different stages in case processing. Evidence suggests that decisions made by early-stage criminal justice actors can affect decisions made by actors involved in subsequent decision-making stages (Sutton, 2013; Kutateladze and Lawson, 2016). Given the interconnected nature of case processing decisions, a study of one decision point runs the risk of failing to identify extralegal influence at other points. Accounting for this is especially

important in research on prosecutorial decision-making because the prosecutor is in a unique position to directly affect multiple stages of case processing. The literature examining multiple case processing stages provides further insight into the dynamic nature of prosecutorial decision-making.

The Examination of Prosecutorial Decision-Making Across Multiple Case Processing Stages

Given that prosecutors are involved in multiple stages, is important to study how their decision-making may vary across these stages. While much of the early research was focused on one decision point, more recent work has been able to probe prosecutorial decision-making across multiple stages. However, much like the research that examined single decision points, the results of studies examining multiple stages are mixed (Kingsnorth, MacIntosh, and Wentworth, 1999; Wooldredge and Thistlewaite, 2004; Shermer and Johnson, 2010; Sommers et al., 2014). For example, in a study of 365 adult sexual assault cases, Kingsnorth, MacIntosh, and Wentworth (1999) failed to find evidence that the race of the defendant and victim, in any combination, had a significant effect on any decision point throughout case processing.

Further complicating the results of studies investigating racial disparities in prosecution, Wooldredge and Thistlewaite (2004) unexpectedly found that African American defendants experienced consistent benefits in case-processing when examining the cases of 2,948 male defendants arrested for misdemeanor assault against an intimate within Cincinnati, Ohio. The researchers found that Black defendants were less likely to be charged, more likely to have their cases dropped, and received shorter sentences when compared to white defendants

(Wooldredge and Thistlethwaite, 2004). However, the authors expressed caution in interpreting the results, suggesting that the benefits experienced by African American defendants could be an indication of a higher likelihood of arrest due to racialized police practices, which result in weaker cases brought against them. Evidence in support of racial and gender disparities in various case processing decisions was found in a study of 4,178 domestic violence cases prosecuted in Shelby County, Tennessee (Henning and Feder, 2005). While legal variables were consistently the most influential in courtroom decisions, female defendants were less likely to be held in pretrial detention or prosecuted, were less likely to plead or be found guilty, and were less likely to be incarcerated, compared to males (Henning and Feder, 2005). In regard to racial disparities, prosecutors were more likely to file charges at case screening for nonwhite defendants (Henning and Feder, 2005).

The inconsistent results of studies on race, gender, and prosecution, even when examining more than one decision point, suggest a nuanced relationship. The relationship between these extralegal characteristics appear to be to subject to contextual influences such as crime type and may not always be direct. Indeed, in an analysis of 45,678 federal sentencing events, Shermer and Johnson (2010) found that gender had a direct effect on the likelihood of charge reductions, while other extralegal characteristics such as race, ethnicity, and age did not. However, race did have a significant effect in regard to weapons charges, with Black and Hispanic defendants being .70 times as likely to have their charges reduced compared to White defendants. In addition, gender disparities in charge

reductions were most pronounced for drug and violent offenses, further highlighting the importance to analyze prosecutorial data across various crime types (Shermer and Johnson, 2010).

Shermer and Johnson's study (2010) highlights the importance of investigating the interaction of certain variables and their relationship with prosecutorial decision-making. There is a clear need for analyses that investigate multiple constellations of legal and extralegal characteristics in addition to looking at multiple outcomes. In addition, it is important to investigate how these different stages affect one another. While examining outcomes multiple outcomes in prosecution adds to the strength of an analysis, looking at each stage in isolation still presents limitations. Research investigating the potential of disadvantages in case processing to accumulate provides even stronger evidence for the extralegal influence in prosecutorial decision-making.

Cumulative Disadvantage

Evidence of extralegal influence on prosecutorial decision-making is made even more concerning when considering the long-term potential of small inequities to snowball as a case is moved from screening to disposition. The control over multiple case-processing stages helps to orient the prosecutor to think downstream. A current decision made by a prosecutor will be influenced by their perception of how it will affect decision-making outcomes at later stages. This control over multiple decision points in case-processing creates the potential for prosecutorial decision-making to uniquely influence the trajectory and outcome of a criminal case. The potential of disadvantages caused by certain elements of

prosecutorial decision-making to accumulate and result in unjust outcomes necessitates rigorous academic investigation.

Cumulative disadvantage is described by Sutton (2013: 1208) as a “dynamic process in which an unfavorable initial social position leads to further losses in the future.” This concept is particularly salient within prosecutorial decision-making, due to the wide discretion enjoyed by prosecutors at multiple stages of case processing. Decisions made by the prosecutor during initial phases of case processing that result in disadvantage for the defendant can accelerate and compound to produce increased disadvantage at later stages. From initiation to disposition, disparities in processing outcomes have the potential to widen as cases are moved through the system. Wooldredge (2012) analyzed the case trajectories of 5,905 African American and White defendants arrested in Ohio during 2005. He found that African American males aged 18-29 were less likely to be released on their own recognizance and were assigned greater bond amounts when compared to all other defendants. These disparities in bail decisions found at early stages in case processing contributed to harsher sentencing outcomes, highlighting the downstream effects of early disadvantages in case processing (Wooldredge, 2012).

Additional support for cumulative disadvantage was provided by Sutton (2013) in a study of a country-wide sample of male defendants from the year 2000. Sutton (2013) analyzed the role of racial disadvantage in pretrial detention, guilty pleas, sentence severity, as well as cumulative effects across these three stages. Direct effects of race on outcomes in earlier stages of punishment were

found to disadvantage Black and Latino defendants and continue to affect later stages. Racial disparities were most pronounced in the decision to detain before trial, which subsequently exerted a strong influence on decisions related to plea bargains and sentencing (Sutton, 2013). Moreover, in a study examining case outcomes across multiple decision points and crime types, Kutateladze and colleagues (2014) found that Black and Latino defendants were treated more punitively for all case outcomes examined except for dismissal when compared to White defendants. Additionally, Black and Latino defendants were both more likely to receive the most disadvantaged combinations of decision-making outcomes when compared to whites. The disadvantages felt by these defendants were stronger in cases involving violent crimes, where it was hypothesized that racial stereotypes would be more likely to exert influence. Interestingly, the disadvantages felt by Black and Latino defendants were not extended to Asian defendants, who often received less punitive outcomes than White defendants (Kutateladze et al., 2014). The results of the study by Kutateladze and colleagues (2014) bolsters the argument that racial and ethnic stereotypes may exert a stronger influence for certain crime types. The results showed that while racial and ethnic disparities disadvantaged Black and Latino defendants overall, the extent of the disadvantage varied across offense type, as well as felony and misdemeanor classifications (Kutateladze et al., 2014).

Research on prosecutorial decision-making and cumulative disadvantage not only highlights the importance of examining multiple decision points, but also the importance of examining prosecutorial decision-making across various

offense types (Shermer and Johnson, 2010; Kutateladze et al., 2014). Many of the studies on prosecution that failed to return evidence of extralegal influence on prosecutorial decision-making focused on one stage in case processing, such as case screening (Bernstein et al., 1977; Albonetti, 1987; Albonetti, 1992; Spears and Spohn, 1997; Holleran et al., 2010). In contrast, more consistent evidence of extralegal influence has been found by studies examining multiple stages of case processing, accounting for the interconnected nature of these decision points (Kutateladze et al., 2014; Henning and Feder, 2005; Kutateladze, 2018; Sutton, 2013), though some studies examining multiple decision points have found little to no evidence of such influence (Kingsnorth et al., 1998; Wooldredge and Thistlewaite, 2004). Additionally, research examining prosecutorial decision-making across different crime types has shown that disparities can vary in magnitude depending on the type of offense the defendant is charged with (Shermer and Johnson, 2010, Kutateladze et al., 2014). The logical next step would be to analyze offense specific differences in prosecutorial decision-making across multiple case processing decision points. However, due to reasons such as data limitations, this remains a gap in the literature that has not been sufficiently filled. Little research has examined how extralegal factors might affect prosecutorial decision-making across both different offense types and multiple stages in case processing.

This study aims to address this deficiency in the current literature on prosecution by investigating the role of race and gender on decisions made throughout case processing. Prosecution is a complicated web of decision points

and factors, both legal and extralegal. In order to gain a complete understanding of how prosecution functions, social scientists need to take a wholistic approach to studying it that takes into account the variation in outcomes across both stage and offense. The following chapter will elaborate on how this study intends to do so by theorizing the function of prosecution and presenting the hypotheses to be tested.

Chapter 3: Theory and Hypotheses

Recent insights into the function of prosecutorial decision-making have been achieved through the incorporation of concepts developed within and outside the field of criminology. The success of such research highlights the importance of integrating various social scientific perspectives within criminology. This study aims to add to the current knowledge of prosecutorial decision-making by further integrating criminological theories with concepts developed within the fields of political science and social psychology. The following chapter introduces the relevant theoretical perspectives that serve as a guiding framework for this study's research questions and hypotheses.

Courtroom Dynamics

Theoretically, the American criminal justice system is an adversarial system in which justice is meted out by dueling parties whose interests are distinct from one another. The prosecutor, arguing on behalf of the state, wants to obtain a conviction. The defense attorney, representing the defendant, ultimately wants to win the freedom of his or her client. In cases where the defendant is convicted, the defense attorney wants to obtain a lenient sentence. The judge aims to impartially preside over the criminal case, ensuring neither the prosecution nor defense overstep any boundaries along the way. In the case of a conviction, the judge is tasked with handing down a sentence that is commensurate with the crime and the perceived dangerousness of the defendant. These distinct goals are enveloped by the overarching mission of punishing those who have harmed society, but not allowing the state to abuse its power. In this idealized version of our criminal

justice system, every defendant receives individualized justice in which the details of their case are thoroughly examined, and the result is not influenced by external factors.

While the above goals are certainly in the minds of each courtroom actor during a criminal case, the function of the American criminal justice system is much different in practice. Rather than adversaries ardently fighting for one's distinct goals, these actors instead operate as key members of the courtroom workgroup (Eisenstein and Jacob, 1977). The courtroom workgroup operates like an organization in which "persons within the courtroom perform quite specialized functions, and their activity fits into a broader pattern and is constrained by it" (Eisenstein and Jacob, 1977: 10). The actors within this workgroup have different formal roles but rely on one another to accomplish shared goals. What these goals are can vary from workgroup to workgroup, but there is great continuity in terms of the goals which are deemed most important. Expeditious disposal of cases and reduction of uncertainty are often viewed as the most important goals of the courtroom workgroup, which both run contrary to the ideals of an adversarial system (Eisenstein and Jacob, 1977). Indeed, instead of individualized justice, patterned behaviors that resemble routines are developed among the members of the courtroom workgroup in the name of expeditious disposal (Flemming, Nardulli, and Eisenstein, 1992). Due to various restraints, actors involved in the processing of criminal cases partially routinize their decision-making in order to ensure that cases that appear similar are treated similarly and that cases can be disposed of in a consistent manner.

Although in theory all courtroom actors are equal, this is not the case in practice. Instead, prosecutors maintain multiple advantages over courthouse rivals and play an outsized role in shaping courtroom routines. Their elected positions provide them with a political mandate from citizens that does not require neutrality when prosecuting a criminal case (Flemming et al., 1992). In contrast, judges are expected to avoid political stances altogether and instead maintain a neutral position over the processing of cases. Opposite the prosecutor, the defense attorney arguably possesses the least amount of influence over the workgroup largely due to their limited control over consequential decisions. In an environment where uncertainty and conflict are to be avoided, the goals and the patterns of the most powerful actor, the prosecutor, tend to exert influence over the patterned responses to criminal cases within a workgroup.

Within prosecutor offices, norms and patterns are developed to guide decision-making (Frederick & Stemen, 2012). These norms help to determine which cases should be dismissed or prosecuted, which warrant a charge reduction, and the acceptable value of a plea bargain. During the course of their work courtroom actors gain a sense for which cases are more typical than others. Doing so helps to ensure that solutions to problems are not continually reinvented, and that defendants in similar cases receive similar treatment (Flemming et al., 1992). Over time, notions of what constitutes a “normal crime,” or a crime whose typical characteristics are known and well established, are developed by both the prosecutor and public defender in the course of their work (Sudnow, 1965). The typicality of a given case will influence how it will be processed. Cases that are

perceived to contain the characteristics of a typical offender for the charged offense will be seen as more convictable. How well a case fits the profile of what courtroom actors have deemed to be normal will have an effect on whether formal charges are filed, and the subsequent negotiation process involved in crafting a plea agreement (Sudnow, 1965).

New prosecutors are socialized by more experienced mentors to accept and understand the philosophies that are to be adhered to and guide the decisions made by members of the prosecution unit (Frederick & Stemen, 2012). This acculturation functions to ensure that their decisions are in line with what has been established as the accepted norms. Which cases are declined at screening, how cases are charged, and the conditions which are seen as acceptable within a plea offer are governed by unit-level norms and policies (Frederick & Stemen, 2012).

What constitutes a typical or “normal” crime is influenced by a variety of legal and extralegal factors. While criminal history is external to the facts of the case, it is often used as a key determining factor in deciding how to prosecute a case, sometimes trumping the strength of evidence itself (Frederick & Stemen, 2012; Kutateladze & Lawson, 2018). Sudnow (1965) argues that over time defense attorneys develop a knowledge of the “typical manner in which offenses of given classes are committed, the social characteristics of the persons who regularly commit them, the features of the settings in which they occur, the types of victims often involved, and the like” (p.259). What constitutes a normal crime is largely determined by complex, courtroom-specific stereotypes that interact

with a variety of legal and extralegal factors such as defendant race and offense type. Certain racial or ethnic groups can come to be seen as the typical offenders of a given crime, with this notion being informed by past prosecutions. These conceptions of what characteristics comprise a typical case have the potential to affect prosecutor decision-making throughout the processing of a criminal case.

Focal Concerns Theory

Building upon previous sentencing research, Steffensmeier, Kramer, and Ulmer (1998) introduced their focal concerns theory in order to frame hypotheses about the effects of race, gender, and age on sentencing. Steffensmeier and colleagues argued that three main focal concerns exert influence on judges when deciding sentences: *blameworthiness*, *community protection*, and *practical constraints and consequences*. Blameworthiness is measured in terms of the seriousness of the offense and harm caused (Steffensmeier et al., 1998). When taking into account the blameworthiness of the defendant, judges are attempting to provide a punishment that is commensurate to the offense the defendant has committed. When considering the protection of the community, a judge's goal is to evaluate the dangerousness of the offender and the risk of recidivism. In order to make such an evaluation, judges consider the offender's criminal history, type of crime, drug dependency, education, and employment, among other things (Steffensmeier et al., 1998). The final focal concern, *practical constraints and consequences*, explains that judges weigh concerns related to the working relationships with other criminal justice actors such as prosecutors and defense attorneys, as well as individual defendant considerations, such as the offender's

“ability to do time” (Steffensmeier et al., 1998). Judicial decision-making does not occur in a vacuum. Judges consider how a decision might affect existing relationships with the courtroom workgroup and the flow of cases. Sentencing decisions must also be made with consideration of the correctional resources currently available. Additionally, judges are concerned with the effect the sentence will have on the offender. They therefore consider the offender’s health, special needs, and family situation when deciding a sentence (Steffensmeier et al., 1998).

Although originally developed to explain judicial decision-making, focal concerns theory has been extended and applied to prosecutorial decision-making in a number of studies (Kutateladze et al., 2014; Shermer & Johnson, 2010; Spohn et al., 2001; Vance et al., 2019). According to this perspective, prosecutors are concerned with the same three focal concerns as judges, but the nature of these concerns may vary (Spohn et al., 2001). Unlike judges, prosecutors are not concerned with the social costs of punishment, but rather focus on the likelihood of conviction. This distinction is unsurprising given the difference in roles of judges and prosecutors. While judges are involved in the final stage of case processing, prosecutors are involved in multiple stages, and therefore have a “downstream orientation” that forces them to consider how a decision at the current stage will affect the case at a later stage (Frohmann, 1997).

In order to assess convictability, prosecutors may rely on a “perceptual shorthand” to predict how the defendant will be viewed by the judge and jury (Spohn et al., 2001), incorporating stereotypes linked to the defendant’s race,

gender, and age. In the absence of complete information, they rely on stereotypes to assess the likelihood of conviction when deciding how aggressively to pursue a case. As argued by Sudnow (1965), negotiations between the prosecution and defense are often dictated by how well a case fits a profile developed by these courtroom actors over years of experience. I argue that it is within this framework of routinized decision-making that courtroom actors employ typescripts to efficiently compare a current case to past cases and evaluate its strength.

Courtroom-specific typescripts allow actors to develop a profile of the typical offender against which current cases can be judged. These typescripts inform the prosecutors perceptual shorthand and influence the processing of a criminal case.

Typescripts Theory

First developed by Harris (1977), typescripts theory describes a process in which social hierarchies are maintained through the assignment of social roles and behaviors to different groups of people. In this process individuals are prescribed social roles based on “type.” A type describes a characteristic such as race, gender, or age, and an individual can simultaneously be more than one type (i.e., male and black are both a “type”). Every “type” is accompanied by a socially defined “script” which dictates where each type belongs in the social hierarchy and how each type should behave. Such assignments help to reenforce and maintain the current societal power structure. For example, Harris (1977: 11) argues that “in American society, the assignment of blacks to the ghetto, women to the home and poor to the factory represent examples which have met the function of preserving white, male, middle-class dominance.”

Typescripts function to define the types of actors for which certain behaviors are expected an acceptable. In sum, typescripts are “institutionally supported, high communality expectancies that align types of actors with likely, unlikely, and impossible types of behaviors and identities, including both nondeviant and deviant behaviors and identities” (Harris, 1993: 167).

Typescripts allow individuals to have “prewritten” scripts which can be used to assess a situation or person, providing a shortcut for decision-makers (Harris, 1977). Indeed, a key function of typescripts is as a decision-making heuristic that helps to routinize otherwise complicated judgements. Social cues are important for processing information and understanding one’s social environment (Sealock and Simpson, 1998). Typescripts provide people with a framework for efficiently processing social cues and making judgements on the character and typical actions of individuals they encounter. In other words, “typescripts structure society so as to make it readily understandable and predictable to its members” (Sealock and Simpson, 1998: 430). Typescripts allow decision makers to efficiently judge the character of an individual and his or her typical behavior, though possibly at the expense of accuracy. Those who follow the expected behaviors assigned to a particular type are following their prescribed typescript. These individuals likely make decision-making easier for courtroom actors, as their description and behavior conveniently match preconceived notions held by these actors. Those who do not exhibit the behavior expected from their type are classified as “countertypes” (Sealock & Simpson, 1998). These individuals likely require a more rigorous evaluation.

In addition to individuals being classified into types, crimes are typed in a similar manner. Offenses are often typed by race, with some crimes defined as being within the arena of one race, but not another. The type for general deviant behavior would be a black male of low socio-economic status, and the countertype would be a white female of high socio-economic status (Sealock & Simpson, 1998). Crimes can also be gender typed, with certain deviance seen as “male deviance” while other types of deviance seen as the arena of females. Male-typed offenses are ones that involve notions of masculinity and skills that are normally attributed to men. Female-typed offenses are ones that are disproportionately committed by females and follow traditional ideas of femininity (Sealock & Simpson, 1998). Crimes that have been committed with a level of parity between the genders would be typed as gender-neutral.

As previously stated, typescripts as a heuristic help to routinize and expedite difficult decisions. This is of particular importance in the criminal courtroom, where speed and efficient processing of cases is often seen as a primary goal (Eisenstein and Jacob, 1977). In addition, the availability, or scarcity, of resources exerts pressure on the courtroom actors. Personnel availability and scheduled court hours determine the framework within which prosecutors must operate (Frederick & Stemen, 2012). These practical constraints often increase pressure to make efficient processing of criminal cases the main focus of a court system. Therefore, filtering out cases that have a high probability of resulting in trial and a possible acquittal is a top priority. In order to do so, prosecutors attempt to determine the likelihood of conviction in a hypothetical

trial when screening a case (Spohn et al., 2001). It is here where the use of typescripts heuristics likely proves particularly useful. Cases that fit the profile of a common typescript are likely seen as more convictable than those that don't, and their prosecution would likely to be more routine. Cases that are seen as countertypes, or not possessing enough of the features of a normal crime, are likely seen as less convictable. There will not be a routinized procedure for these countertypes, and the outcome of these cases is likely to be less predictable.

The evaluation of convictability is dynamic in case processing, and certain countertypical cases might instead be viewed as especially convictable, especially as they are evaluated at later decision points (Harris and Hill, 1986). In earlier stages of criminal case processing such as arrest, the behavior of countertypes is more likely to be seen as a singular, anomalous, mistake and not an indication of typical behavior and risk of future offending. According to the logic of the theory, an accusation of robbery levied against a white female is likely to be dismissed by a police officer because such criminal deviance is seen as unlikely or even impossible from that type of actor (Hill, 1977). This is likely to be the case in any situation where the alleged behavior does not match the individual's ascribed type. As a result, countertypes are less likely to be arrested and subsequently entered into the justice system (Sealock and Simpson, 1998). This filtering of countertypes at early decision points in a criminal case increases the rarity of countertypes in later stages. However, it is possible that in some cases this rarity conveys a notion of increased culpability. Case processors might view the mere presence of a countertype at a decision point where most countertypes

have already been filtered out, such as sentencing, as an indication of guilt and high risk of recidivism. These late node countertypes are thus unique and require a treatment outside the normal, routinized bargaining and discounts applied to types. Indeed, Sudnow (1965) argued that atypical cases that pass multiple decision points are seen as requiring more aggressive prosecution compared to archetypal normal crimes.

Prosecutors, as well as other members of the courtroom workgroup, aim to efficiently process cases and avoid uncertainty in their outcomes. A focus on routinizing the prosecution of cases by comparing the case at hand to past cases that were successfully prosecuted aids efficiency by decreasing the likelihood of trials and lengthy legal battles, thus achieving the goals of the courtroom workgroup. However, with efficiency and trial avoidance being of utmost importance, prosecutorial decision-making is made susceptible to bias and extralegal influence. A reliance on typescript heuristics allows courtroom actors to maintain an efficient flow of cases, but it also creates opportunities for unequal treatment of defendants at various decision points.

The Function of Focal Concerns and Typescripts within the Courtroom

Criminal courts function as organizations within which actors share common goals. Among the most important goals are efficiency and certainty. Though performing different roles, members of the workgroup ultimately work together to ensure that these goals are achieved. As a result, patterned responses are developed to respond to problems faced by the entire workgroup, as well as those faced by each individual actor. Courtroom decisions are dictated by the

three focal concerns of blameworthiness, protection of the community, and practical constraints and consequences (Steffensmeier et al., 1998), and both prosecutors and judges are concerned with maintaining the stable flow of cases and working relationships with other courtroom actors.

In order to maintain a steady flow of cases, prosecutors and judges often rely on a “perceptual shorthand” to make decisions more efficiently. This perceptual shorthand is informed by prevailing typescripts that define which characteristics a typical defendant should possess for a given crime. The creation of typescripts that describe the typical offender of a crime type is influenced by both stereotypes held by the general population in everyday society, as well as courtroom experience. While broad cultural stereotypes influence the typescripts used within the courtroom, they are not necessarily the driving force behind their creation. In case processing it is often the stereotypes derived from past experiences that dictate what constitutes a “normal crime” (Sudnow, 1965). In developing perceptions of normal crimes, court actors create typescripts that describe traits an offender of a specific crime will most likely possess (Steen, Engen, & Gainey, 2005). Certain criminal deviances will be expected, and more believable, from certain classes of people. These typescripts are used as a method for evaluating the perceived culpability of the defendant and their risk of reoffending. According to Hill and colleagues, “typescripts serve, in a word, as a heuristic that guides the processor in making likelihood and utility estimates” (1985: 149). Thus, defendants that meet the type for a given crime will be perceived to have a higher propensity for reoffending in the future because the

offense is within their normal range of behavior. In effect, these defendants will be considered more convictable.

Previous research testing typescripts theory have returned somewhat mixed results. For example, Best and Luckenbill (1990) performed a study testing Harris' assertion that the rate of female to male deviance would be lower in societies where male dominance was greater. The researchers used homicide and imprisonment data from 1980 to test the hypothesis across all fifty U.S. states. Their results did not support the theory, however, and male dominance, measured by two indices, was positively related to female homicide rates and unrelated to female imprisonment. Best and Luckenbill (1990) argued that the results suggested the theory needed to be refined, and that it should consider the possibility that typescripts may encourage some forms of female deviance, while still discouraging other forms.

Despite Best and Luckenbill's (1990) findings, other studies testing the theory suggest typescripts are employed by criminal justice actors in ways that affect their decision-making. In an investigation of police decisions to arrest, Sealock and Simpson (1998) employed typescripts theory in an effort to uncover the role of race, gender, socioeconomic status, and offense types in police decision-making. Partial support was found for assumptions made by the theory and the assertion that "countertypes are likely to be treated more leniently than types at the beginning of juvenile justice processing because police will judge that the type has a substantially greater chance of showing the "negative" trait ... than does the countertype" (Sealock and Simpson, 1998). The researchers found that

previous arrests increased the likelihood of arrest to a greater extent for female suspects than male suspects across all offense types. It was also found that females were less likely to be arrested for male-typed and neutral offenses, but more likely to be arrested for female-typed offenses, when compared to males. However, causing physical injury or monetary damage in the course of committing an offense was equally influential in the decision to arrest for males and females, which was not in support of the theory (Sealock and Simpson, 1998). The researchers identified key limitations and suggested future research should examine how individuals are moved through various nodes of the justice system to gain more insight into the operation of typescripts within it.

In a study of the role of typescripts in the final sentencing decision, Steen, Engen, and Gaaney (2005) found that defendants who fit the description of a “dangerous drug dealer” had a higher chance of being incarcerated and received longer sentences when compared to offenders that did not fit the stereotype description. However, the magnitude of these findings varied by race, as the effects fitting the description were greater for white defendants compared to black defendants. Engen and colleagues (2005) argued this was due to the especially lenient treatment of white defendants who do not fit the description of a dangerous drug dealer compared to black defendants that do not fit the stereotype. These results provide evidence for both focal concerns and typescripts theories in sentencing. Given this support, it is an important next step for researchers to examine these relationships within the context of earlier case processing decisions.

Focal concerns and typescripts theories are able to explain patterns of decision-making within the context of the courtroom workgroup. Applying the theoretical framework outlined above to prosecutorial decision-making is likely to enhance the understanding of how these actors operate and the results of the decisions they make. A deeper understanding of how prosecutor offices process cases will provide additional knowledge to the field of criminology that will be useful for academics and policy makers alike. Prosecutors have a critical role in the processing of criminal cases, but their contributions to issues such as racial disparities within case outcomes and mass incarceration are not fully known. The investigation of how race and gender might interact with legal factors to produce disparate outcomes in case processing is a necessary step towards filling the gaps in the current literature.

What Makes a Type?

For this study, I am proposing that the description of a typical defendant, or type, is composed of four characteristics: race, gender, criminal history, and defense counsel. The race of the defendant is an unignorable characteristic that can trigger both implicit and explicit biases in charging decisions. Furthermore, as previously outlined, some studies have found that defendant race influences prosecutorial decision-making (Henning and Feder, 2005; Pyrooz et al., 2011; Kutateladze et al., 2014; Kutateladze, 2018). In addition, given documented difference in offending patterns across racial categories (Piquero and Brame, 2008), prosecutors may allow aggregate crime patterns to influence their evaluation of a single defendant. A similar argument can be made about gender.

Given the well-documented gender gap in crime (Lauritsen, Heimer, and Lynch, 2009; Choy, Raine, Venables, and Farrington, 2017), it is likely that crime is seen as atypical for females, and female defendants are viewed as special, anomalous cases.

Steffensmeier and colleagues (1998) surmised that criminal history was one of the key characteristics that judges use to evaluate the defendant's dangerousness and risk of recidivism.

Prosecutors also use criminal history as an important tool to help guide decisions (Kurlychek and Johnson, 2019). Prior arrests or convictions for the same crime the defendant is charged with would help create a more convincing argument of guilt for the current charge. Additionally, a criminal history that includes various other offenses would likely be seen as an indication of high risk and general criminality. Even if the defendant had previously never been arrested or convicted of the current charge, other prior offenses might signal to prosecutors that the current offense is within the normal behavior of the defendant. Therefore, it is more believable that the defendant did commit the crime he or she is currently charged with and is likely to reoffend in the future.

In addition to criminal history, Steffensmeier and colleagues (1998) stated that some socioeconomic factors such as education and employment will be taken into consideration when making evaluations of dangerousness and risk of recidivism. Furthermore, Hill (1977) argues that street crime is reserved for "the poor." On the other side, such criminality is perceived as nearly impossible for high class identities. While information on a defendant's education and

employment is out of the scope of the data being used in this study, type of defense counsel can be used a proxy for socioeconomic status more generally. Although the type of defense counsel representing a defendant is an imperfect proxy for socioeconomic status, it has been used for this purpose in previous research (Kutateladze et al., 2014). The argument for doing so is that defendants who are supplied an attorney by the court likely cannot afford a private attorney, and therefore come from a lower socioeconomic background. Conversely, those who pay for private representation are more likely to come from a higher socioeconomic background.

Typescripts theorists argue that the typescripts upheld by society are those that help to maintain current power structures (Sealock and Simpson, 1998). The current power structure of the United States is one of considerable economic and racial inequality, and these inequities extend to the criminal justice system. As a result, the incarcerated and justice-involved population within the United States is a reflection of the dominant typescripts for criminality. These typescripts dictate that criminal behavior is most often exhibited by low-income minority, particularly Black and Hispanic, males. This is supported by the fact that males made up 93% of the incarcerated population as of 2018, and Black males are imprisoned at a rate 5.8 times greater than White males, while Hispanic males are incarcerated at a rate 2.6 times greater (Carson, 2020). Furthermore, criminal history is often used as a tool for determining risk of reoffending (Steffensmeier et al., 1998), and individuals who come from a low socioeconomic background are more likely to be imprisoned later in life than those that come from a more

privileged socioeconomic background (Looney and Turner, 2018). Given this information, I argue that the dominant typescript prescribing criminal behavior will be a low socioeconomic Black or Hispanic male with a criminal history. However, prosecution patterns for a given jurisdiction are also subject to local variations in prevailing typescripts based on unique population demographics. Therefore, the data will be examined in Chapter 4 of the study to determine if the characteristics most commonly found among the defendants for each crime type match the above description.

Hypotheses

During case processing, prosecutors will try to avoid prosecuting cases that they do not deem likely to end in a conviction in order to focus their energy on defendants they perceive as more convictable (Frederick and Stemen, 2012). The perceptual shorthand used by prosecutors to expedite their decision-making likely manifests itself in the form of typescripts which are subsequently used to assess the convictability of a case and determine how aggressively he or she will prosecute it. In addition to legal and evidentiary factors, prosecutors will consider the typicality of the defendant and how they might be perceived by a jury if the case were to go to trial (Spohn et al., 2001). Defendants will be viewed as more convictable when the characteristics of their case match the most common characteristics of defendants previously accused of similar crimes. Thus, prosecuting a case that involves a type will be seen as a safer bet than prosecuting a case that involves a countertype. If this theory is correct, prosecutors will be more willing to prosecute cases that are deemed to fit the profile of a normal

crime. If true, this would add support to the findings that, absent confounding information, types are generally more likely to be pursued in the justice system than countertypes (Sealock and Simpson, 1998).

Hypothesis 1: Cases that match the characteristics of a “normal crime” typescript will be less likely to have their cases dismissed at any point than cases that do not.

Although types will be perceived as more convictable than countertypes, this does not necessarily translate into harsher punishment. Instead, the processing of types is likely to be more routine than the processing of countertypes. As Sudnow (1963) theorized, standardized plea discounts are constructed between prosecutors and public defenders for normal crimes. In contrast, the countertypes that were not filtered out at earlier stages will not be subject to routinized plea deals because there are little to no precedents set for such cases due to their rarity. Thus, it is hypothesized that in cases possessing the characteristics of a normal crime, the defendant will be more likely to receive a plea deal that includes a charge reduction.

Hypothesis 2: For cases that end in a guilty plea, cases that match the description of a “normal crime” typescript will be more likely to receive a charge reduction than cases that do not.

Working backward from the offense, courtroom actors construct an image of the typical offender that is used as a heuristic for evaluating the convictability of a case. As a result, decision makers categorize certain groups of people that possess stereotypical characteristics as types, while categorizing those that don't

possess them as countertypes. The creation of normal crime typescripts aids decision makers in their goal of maintaining courtroom relationships and a steady flow of cases by routinizing decisions that would otherwise be extremely difficult to make. Defendants categorized as types will be processed routinely, while decision-making involving countertypes will require an individualized calculation of how similar or different the defendant is from the constructed stereotype (Steen et al., 2005). In addition, all countertypes will not look the same. Instead, the universe of countertypes will consist of a wide variety of defendant descriptions, whereas types largely follow a single description. Therefore, the individualized treatment given to countertypical cases is likely to result in defendants waiting longer for their case to be disposed, on average, when compared to types. In addition, it is likely that there will be greater variability in the time from screening to disposition for countertypes when compared to types. It is hypothesized that length of time between arrest and disposition, and the standard deviation around the average time to disposition will be greater for countertypes.

Hypothesis 3: Among cases that end in a conviction, the time elapsed between the filing of criminal charges and case disposition will be shorter for cases that match the description of a “normal crime” typescript compared to cases that do not.

Hypothesis 4: Among cases that end in a conviction, there will be greater variability in the average time between screening and disposition for cases that do not match the description of a “normal crime” typescript.

By definition, countertypes will always be rarer than types. The rarity of countertypes will increase as they are passed to later decision-making nodes due to many of them being filtered out. In the earlier stages of a criminal case, starting from the decision to arrest, the abnormality of countertypes will be reason for them to be filtered out. The criminal behavior can more easily be determined a singular occurrence that is not indicative of the individual's overall behavior. However, those countertypes that are passed along to later nodes will not be subject to the same leniency. Their presence in later decision points despite the high selectivity of previous points will signal to decision-makers that there is something unique about the case that requires special treatment (Harris and Hill, 1986). In regard to case processing, "normal crime" types will be handled routinely, and their speedy disposition will be prioritized (Sudnow, 1965). Most countertypes, on the other hand, will be filtered out at arrest and case screening, and those that remain will be perceived as especially culpable. This distinction is likely to be most visible at sentencing, the final stage of case processing. Therefore, it is hypothesized that convicted cases involving countertypes will receive harsher sentences than cases involving types.

Hypothesis 5: For all cases that end in a conviction, cases that match the description of a "normal crime" typescript will be less likely to receive a custodial sentence than cases that do not.

Chapter 4: Data and Methods

The dataset for this research project contains information on case processing practices within the District Attorney of New York County (DANY). The data were collected over a 20-month period between the years 2010 and 2011, as part of a research project funded by the National Institute of Justice that involved the Vera Institute of Justice (Kutateladze, 2016). Vera's partnership with the District Attorney of New York gave researchers rare access to case processing data in a large, diverse jurisdiction (Kutateladze et al., 2014). In Manhattan, police first bring cases to DANY's Early Case Assessment Bureau (ECAB). It is here where assistant district attorneys (ADA) decide whether to accept or decline each case, as well as which charges to formally file against the defendant (Kutateladze et al., 2014). Misdemeanor and felony cases that are accepted are brought in for arraignment, typically within 24 hours of arrest, where they are informed of the charges against them and judges make a decision regarding pretrial detention. After arraignment, felony cases are brought before a grand jury, while misdemeanors are moved to all-purpose parts of the criminal court. Felony cases that receive an indictment are then sent to the Supreme Court,² where the defendant has the option to plead guilty or go to trial. Defendants are able to plead guilty at multiple stages in case processing, but any plea must be approved by the presiding judge (Kutateladze et al., 2014).

The dataset contains information on 159,206 misdemeanors and 26,069 felony cases prosecuted by DANY's office during a 20-month period between

² In New York State the Supreme Court is a trial court that oversees both criminal and civil court cases.

2010 and 2011. However, cases that were missing the defendant's race and gender were dropped from the analysis.³ Cases were classified as misdemeanor or felony based on the "screening charge" rather than "arrest charge" because the screening charge reflects a formal charging decision, while the arrest charge does not (Kutateladze, et al., 2014). The analysis focuses on a subset of the most common felony cases whose top charge is categorized as either a non-marijuana felony drug offense, assault, robbery, burglary, larceny, or other felony theft (n = 18,691). These specific offenses are categorized into three offense types: drug offenses, person offenses, and property offenses.⁴ The final dataset allows for the investigation of prosecutorial decision-making at multiple decision points following the filing of charges for these three categories of common felony offenses.

Dependent Variables

This study uses four separate dependent variables to measure outcomes at multiple points in case processing. The first outcome examined is whether a case was dismissed after screening, measured by a binary variable (1 = dismissed, 0 = fully prosecuted). The second dependent variable is whether or not a defendant received a charge reduction (1 = reduction, 0 = no reduction). This variable is defined as a reduction in the severity of the top charge at final disposition

³ Out of the 26,069 felony cases in the original dataset, 239 (0.009%) were missing data on defendant race, 38 (0.0015%) were classified as "other" for defendant race, and 124 (0.005%) were missing data on defendant gender. Due to the small quantity of missing values, these cases were excluded from the analysis.

⁴ The specific offenses included in each category and their corresponding statutes are as follows: Drug offenses – Controlled Substance Offenses (New York Penal Law §220.00, Title M); Person offenses – Assault and related offenses (§120.00, Title H), Robbery (§160.00, Title J); Property offenses – Burglary and related offenses (§140.00, Title I), Larceny (§155.00, Title J), Other offenses related to theft (§165.00, Title J).

compared to case screening, when the prosecutor formally filed charges. The third dependent variable is a binary measure for whether, upon conviction, the defendant received a custodial sentence (1 = custodial sentence, 0 = non-custodial sentence). The fourth and final dependent variable measures the length of a case, measured as the total number of days between the filing of criminal charges and final case disposition.

Independent Variables

The primary independent variable is a binary variable measuring whether a person is a type or a countertype, coded “1” if the defendant met the description of a type, and “0” if they did not. Normal crime typescripts are based on a constellation of four factors readily available to the prosecutor: *criminal history*, *defense counsel*, *race*, and *gender*. For the purposes of typescript construction, a defendant is defined as having a criminal history if he or she has been previously arrested or convicted of a crime.⁵ Both measures are included because not all defendants with prior convictions had prior arrests on their record, and vice versa.⁶ In addition, prosecutors consider both prior arrests and prior convictions

⁵ To test the sensitivity of the results, models were run that measured criminal history as only “one or more arrests,” as well as only “one or more convictions” separately. Classifying criminal history solely as prior arrests resulted in a typescript that represented a much smaller portion of DANY defendants. This was also the case when classifying criminal history solely as prior convictions. Table 2 shows that when using either alternative measure of criminal history, the portion of defendants who match the “normal crime” typescript is reduced considerably. In addition, effects of these alternative classifications on the outcome variables of interest are not substantially different overall from the classification used in the main analysis (see Table 18).

⁶ Out of the entire sample (n = 18,691), 2,455 defendants had a prior arrest but no prior conviction on their record. Conversely, 1,210 defendants had a prior conviction but no prior arrest on their record. The latter statistic is unexpected, as most convictions should follow an arrest. Unfortunately, no information on how the DANY collects criminal history data that would explain this discrepancy is provided in the dataset documentation provided by ICPSR or the final report provided the Vera Institute (Kutateladze and Andiloro, 2014). However, it is possible that the

when negotiating plea deals (Kutateladze and Lawson, 2016). Defense counsel describes whether the defendant hired a private attorney or was supplied with a public defender. The racial categories included in the data are Black, White, Hispanic, and Asian. The defendant's gender is measured as male or female.

I argue that for each offense type, the description of a normal crime typescript will be defined by a combination of these four factors. Examining the case processing outcomes for types compared to countertypes will help to explain the unique, interactive impact of these combinations of variables, above and beyond the main effects of each individual variable. The offense types being analyzed are drug, person, and property offenses. A description of the precise combination of factors constructing the typescript for each offense category is presented below and descriptive statistics for the typescript categories are presented in Table 1.

-Insert Table 1 about here-

Drug Offender Type

The drug offense category includes all cases that involved a non-marijuana felony possession or distribution crime as the top charge.⁷ For drug offenses, 48.16% of all felony offenders processed by the DANY office were Black and 41.37% were Hispanic. These are the two most common racial categories and

DANY has incomplete arrest data for crimes committed outside of New York County, which would result in an inflated number of defendants who are coded as having a prior conviction yet no prior arrest.

⁷ Felony marijuana cases were excluded from the analysis for two reasons. First, the majority of marijuana cases are prosecuted as misdemeanors and therefore felony marijuana cases are infrequent (n = 249). Second, given that the vast majority of marijuana cases are prosecuted as misdemeanors, those that are prosecuted as felonies are likely cases related to large-scale distribution and therefore unique when compared to the other drug felonies.

combine to represent 89.53% of felony drug defendants. In addition, 87.64% of all defendants were male, 73.59% had a criminal history, and 84.64% were represented by a public defender. The typical drug offender processed by the District Attorney of New York County, then, can be described as a Black or Hispanic male with a criminal history who is represented by a public defense lawyer. Of all defendants initially charged with a felony drug offense, 55.05% meet the description of an archetypal drug offender.

Person Offender Type

The person offense category includes defendants charged with felony assault or robbery, the two most common violent felony offenses. Among these offenses, 53.82% of all defendants processed were Black and 34.93% were Hispanic. Combined, these two racial categories make up 88.75% of all felony defendants who were initially charged with a violent offense. In total, 84.07% of defendants were male, 55.47% had a prior arrest or conviction,⁸ and 85.93% had a public defender serve as their counsel. Therefore, the typical person offender processed by the District Attorney of New York County can be described as a Black or Hispanic male with a criminal history who is represented by a public defense lawyer. Of all defendants who were initially charged with a person offense, 42.88% meet the description of a person offender typescript.

Property Offender Type

⁸ For the individual offenses included in the person offenses category, 48.1% of assault cases involved defendants with a criminal history, while 62.76% of defendants charged with robbery had a criminal history.

The property offense category is limited to felony cases involving burglary, larceny, and theft. Among defendants charged within these offenses, 48.65% were Black and 30.64% were Hispanic, combining to represent 79.29% of defendants. In addition, 74.42% of defendants were male, 53.1% had previously been arrested or convicted of a crime,⁹ and 80.97% were represented by a public defender. Therefore, the typical property offender processed by the District Attorney of New York County can also be described as a Black or Hispanic male with a criminal record being represented by a public defense lawyer. Of all defendants who were initially charged with a felony property offense, 34.42% meet the description of a property offender typescript.

Table 2 presents the frequency and percentage for the constructed typescript within the full sample, as well as the three offense-specific subsamples. In order to demonstrate that the constructed typescripts represent the most common groupings, comparison groups and their frequencies are reported as well. Across all three offense categories, the constructed typescript is the modal grouping of the four variables of interest, and thus represents a typical defendant for each offense type.

-Insert Table 2 about here-

Control Variables

⁹ For the individual offenses included in the person offenses category, 76.42% of burglary defendants, 43.6% of larceny defendants, and 47.87% of felony theft defendants had a criminal record.

Several variables were included in order to measure and account for legal and case factors. *Statutory Severity* of the primary offense is included, which captures the seriousness of the top charge via a series of dummy variables for five felony classes (A, B, C, D, and E). However, not all five dummy variables are included in each analysis, as not all offense types are categorized under all five felony classes. For example, no drug crimes included in the analysis are categorized as Class E felonies and therefore, this category is not included in the drug offense models. Class A felonies are excluded from the Person and Property offense analyses for the same reason. Class D Felony is used as the reference group for all three offense types because it is the most common felony classification, regardless of offense type. The *number of charges* and *number of criminal counts* that a defendant received at screening are measured as continuous variables.

It is important to note that while the inclusion or exclusion of criminal history in each typescript was based on the binary question of whether or not the majority of defendants had previously been arrested or convicted of one or more crimes, for the purposes of the final analyses, criminal record is broken into two separate dummy variables, *Prior Arrest* and *Prior Conviction*. Although prior arrests and prior convictions are both forms of a criminal history, and a prosecutor has knowledge of both when evaluating a case, the two measures may have independent effects on prosecutorial decision-making. Therefore, these measures are included separately. These variables are separated in the final models in order to account for differences in the interpretation of prior arrests and convictions.

They are dichotomized in order to adjust for skewness. The effects of defense attorney type are controlled for using the dichotomous variable *Public Defender* (1 = public defender, 0 = no public defender). In addition, the existence of a considerable number of missing values for attorney type poses a problem for the analysis. Given the quantity of missing values for this variable (n = 1,593), strategies such as listwise deletion are not appropriate. Instead, those with an unknown attorney type are controlled for with the binary variable *Missing Counsel* (1 = missing counsel, 0 = counsel known).¹⁰ The third category of defense counsel, private attorney, is used as the reference category.

The effects of *pretrial detention* are controlled for using a dichotomous variable measuring whether the defendant was held in pretrial detention (1 = pretrial detention, 0 = no pretrial detention). I also control for the *neighborhood of arrest* using five dichotomous neighborhood variables: Harlem/Morningside Heights, Midtown to Financial District – West, Midtown to Financial District – East, and Outside Manhattan. The Upper West Side and Upper East Side neighborhoods, the two most affluent in New York County, are combined to form the reference category (see Kutateladze and Andiloro, 2014: 34). Lastly, the defendant's *age* is measured using a continuous variable recorded at case

¹⁰ In addition to being large in quantity, the cases with unknown defense attorney type differ from other cases in three key ways. First, these cases overwhelmingly end in a case dismissal (76.46% of cases missing defense counsel ended in a case dismissal after screening, compared to 33.81% of cases that were not missing this information). Second, 34.53% of cases missing defense counsel type have a criminal history, while 62.18% of cases with a known defense attorney type have a criminal history. Third, these cases tend to be ones with a very long time between screening and disposition (the average time to disposition for cases with unknown defense counsel is 4,060 days, compared to 188 days for those with a known attorney type). Therefore, it appears these cases may never have been assigned a defense attorney, possibly due to the defendants in the cases being fugitives. These cases are therefore unique, and strategies for missing data such as multiple imputation by chained equations (MICE) would be inappropriate.

screening. Summary statistics for the proposed dependent, independent and control variables are provided and described in additional detail in the next chapter.

Analytical Strategy

The proposed analytical plan uses logistic and Poisson regression models to test the relationship between typescript status and case processing outcomes, after controlling for other relevant factors. In addition, Levene's tests for the equality of variance were performed to test the hypothesis that there will be a greater variability in the time to disposition for countertype cases. Levene's test is used to determine if k samples have equal variances. In this case, the two samples being compared are types and countertypes, repeated for each of the three offense types of interest.

Logistic regression is appropriate for the dependent variables *case dismissal*, *charge reduction*, and *custodial sentence* because they are all binary. Poisson regression is used to estimate the relationship between typescript status and time between screening and disposition, given that *Days to Disposition* is a count variable. The Poisson model is appropriate because it does not require the dependent variable to be normally distributed and therefore is better suited for the skewed distribution of the *Days to Disposition*. Preliminary examinations of the data found evidence of overdispersion, which can lead to inefficient estimates and downward-biased standard errors in the Poisson model (Long, 1997). However, the Poisson was chosen over the alternative negative binomial model because the negative binomial does not solve the complications caused by overdispersion and

can instead lead to a false sense of confidence in the results when fundamental issues such as omitted variable bias remain (Berk and MacDonald, 2008).

To answer the research questions, the models are estimated for the three offense type categories, resulting in nine logit and 3 Poisson models in total. The first model examines *Case Acceptance*, the second model *Charge Reduction*, and the third model *Custodial Sentence* as the dependent variable. The fourth and final model examines *Days to Disposition* as the dependent variable. For all models, the main independent variable of interest, *Type*, is a binary variable measuring whether the defendant fits the description of a type or countertype. The regression models are executed using the subsamples for *Drug*, *Person*, and *Property Offenses*.

Chapter 5: Results

Descriptive Statistics

Table 3 provides a correlation matrix between the dependent and typescript variables.

An interesting pattern is seen when looking at the results for the *Case Dismissal* and *Charge Reduction* variables. Both *Drug Offender Type* and *Property Offender Type* are negatively correlated with *Case Dismissal* and positively correlated with *Charge Reduction*. These are the directions proposed by hypotheses 1 and 2, respectively. However, the correlations between *Person Offender Type* and *Case Dismissal* and *Charge Reduction* are in the opposite directions. Though these are simply correlations, the results suggest possible differences in the manner in which person offenses are processed. Each of the three typescript categories is negatively correlated with *Days to Disposition*, which is in line with hypothesis 3, which states that types will be processed more quickly than countertypes. Conversely, the positive correlations between all typescript categories and *Custodial Sentence* are contrary to hypothesis 5, which states that types will be less likely to receive a custodial sentence compared to countertypical defendants due to especially punitive treatment given to late node countertypes.

—Insert Table 3 about here—

Table 4 provides a correlation matrix between the typescripts and important control variables. The correlation between *Criminal History* and the three typescript categories is considerably high, though this is expected given that the individuals in these categories all have a criminal record. At .41, the

correlation between *Criminal History* and *Pretrial Detention* is also high, though this is again expected as defendants with a criminal record have a higher likelihood to be detained before trial (Pinchevsky and Steiner, 2016). At 0.53, *Total Charge Counts* is highly correlated with *Total Charges*. Given the high value for some of the reported Pearson's correlation coefficients, variation inflation factors (VIFs) were calculated and reported in table 5 to test for multicollinearity. Only *Criminal History* and *Public Defender* were reported to have a VIF higher than 2, and had a value of 2.21 and 2.13, respectively. Neither of these values are high enough to cause serious concern about issues of multicollinearity in the final models (Wooldridge, 2016).

–Insert Tables 4 and 5 about here–

Table 6 provides the summary statistics for all variables to be included in the models. At 43%, slightly less than half of all defendants processed by the District Attorney of New York meet the description of a normal crime type for their charged offense. As previously discussed, the typescript categories do not represent the majority of all defendants processed for each offense type, but are the most common groupings of defendant race, gender, criminal history, and defense counsel variables by a large margin (see Table 2). Of all cases brought to the DANY office, 37% are dismissed at some point during case processing. This is noticeably higher for person offenses, at 49%, but lower for drug and property offenses, at 29% and 33% respectively. Out of all cases that ended in a conviction, 65% received a charge reduction. This rate does not change drastically for person and property offenses, but only 56% of drug defendants received a

charge reduction. For the defendants whose cases ended in a conviction, 59% received a custodial sentence upon conviction. The rate is notably lower for property offenses, at 51%, compared to 64% of drug cases and 61% of person offenses. The average amount of days between case screening and disposition for cases that ended in a conviction is 196.82 days. The average amount of days ranges from 168.99 to 216.76 when disaggregating by offense type.¹¹

Across both measures, drug cases saw the highest number of defendants with a criminal record, with 65% of defendants having one or more prior arrests and 62% having one or more prior convictions. About half of person offense defendants had previously been arrested, while 40% had previously been convicted of a crime. Similar numbers are seen for property offenses. Among all cases, *Public Defender* was the most common type of defense counsel at 84%. When disaggregating by offense type this number remains similar, with 85% of drug offense defendants, 86% of person offense defendants, and 81% of property offense defendants being represented by a public defender. A very small portion of defendants were represented by private counsel, between 7 and 9% depending on the offense type.

The average amount of charges filed against defendants by the DANY office is roughly 2 and remains consistent across offense type. The average

¹¹ Due to a minority of outlier cases in each offense category whose length may skew the results of the analysis, alternate measures of *Days to Disposition* were examined. When top coded at the 95th percentile, the average amount of days to disposition is 175.69 for drug offense cases, 188.37 days for person offenses, and 153.93 days for property offenses. When cases that are missing information on defense counsel, which account for the vast majority of outliers, the average amount of days to disposition is 176.02 days for drug offense cases, 188.63 for person offenses, and 155.64 for property offenses. More information on these alternate measures is provided in the supplementary analyses section.

amount of criminal counts levied against a defendant is similar to that of charges, with the average defendant receiving 2.48 criminal counts per case. This number is similar across all three crime type categories. The most common felony classification was a Class D Felony, accounting for 35% of all crimes. Slightly more than half of all defendants were detained before trial at 55%, while drug offenses had the highest rate of defendants detained before trial at 67%. Most crime was concentrated in the Midtown to Downtown – West and Harlem neighborhoods, followed by the Upper West and East Side and Midtown to Downtown – East neighborhoods. Only 4% of cases originated outside of Manhattan. Additionally, the average defendant age was approximately 32, and ranges from 28 to 36 across the three offense types.

–Insert Table 6 about here–

Results from Logistic and Poisson Regressions

The results of the logistic regressions for the decision to dismiss a case at screening are reported in Table 7. A minimal number of cases are dropped from each of the analyses, resulting in a sample size of 5,358 for drug offenses, 6,602 for person offenses, and 6,712 for property offenses. The effect of fitting the description of a normal crime typescript on case dismissal is in the hypothesized direction and significant for person offenses only. Consistent with hypothesis 1, defendants who matched the description of the normal crime typescript for a person offense had lower odds of case dismissal at any point after the screening stage. Specifically, the odds of the case being dismissed were approximately 14% lower in person offense cases. The effect of matching the description of a normal

crime typescript was not found to be significantly different from zero for drug and property offenses. The finding that the odds of having a case dismissed are 12% less for person offenses provides evidence for hypothesis 1, albeit limited given the lack of support for the other two offense types. Notably, this effect is net of the individual effects of offender race, gender, criminal history and type of counsel.

—Insert Table 7 about here—

In addition to the effect of typescript status, interesting patterns arise amongst the control variable. For example, Hispanic defendants were more likely to have their case dismissed after screening when compared to White defendants across all three offense types. The same pattern is seen for Black defendants, though statistical significance is only achieved for property offenses. Though this can be seen as Black and Hispanic defendants receiving a benefit compared to White defendants, it might also indicate that the cases brought against them are weaker than those brought against White defendants due to racial biases in policing (Wooldredge and Thistlewaite, 2004). Defendants with prior convictions had lower odds of seeing their cases dismissed across all three models. This effect is especially strong for property crimes, with defendants with one or more prior convictions having roughly 24% lower odds of case dismissal. Additionally, defendants that were held in pretrial detention were significantly less likely to have their case dismissed. The odds of having the case dismissed for individuals who were held in pretrial detention were roughly 62% lower among drug cases, 70% lower among person offenses, and 57% lower among property offenses.

Of particular interest in these models, cases that were missing information regarding defense counsel type were strongly correlated with case dismissal compared to cases represented by private attorneys. Specifically, the odds of a case dismissal among drug and property cases that were missing information on defense counsel were roughly six times greater compared to cases with private attorneys. Furthermore, the odds of a case dismissal for these defendants were roughly three times greater among person offense cases, after controlling for other factors. Given how much older these cases tend to be, sometimes spanning decades, it is unsurprising that they have greater odds to end in a case dismissal. However, it is unlikely that this relationship signifies that the odds of a case dismissal are much greater when a defendant refuses defense counsel. Instead, the abnormal length of these cases suggests that they likely involved fugitive defendants that successfully avoided the efforts of DANY prosecutors and other law enforcement officials.

Results of the logistic regressions for whether a charge reduction was included in the defendant's plea deal are reported in Table 8. Because the data were restricted to cases that ended in a guilty plea, the sample size is reduced considerably for each model. Specifically, the sample size is 3,634 for drug offenses, 2,955 for person offenses, and 4,258 for property offenses. Across all three models examining charge reduction, no significant effect is observed for the typescript variable. Therefore, I find no evidence for hypothesis 2, which states that cases matching the description of a "normal crime" typescript will be more likely to receive a charge reduction compared to cases that do not. Despite a lack

of evidence for my hypothesis, noteworthy results are still found. For example, among person offense cases, Asian defendants had approximately 98% greater odds to receive a charge reduction compared to White defendants, net of other factors. It is possible that “model minority” stereotypes result in prosecutors viewing Asian defendants as less culpable, and therefore are more willing to offer charge reductions during plea bargaining. This is in line with previous research that has found that Asian defendants generally receive more lenient punishment outcomes within the court system (Johnson and Betsinger, 2009; Kutateladze et al., 2014).

—Insert Table 8 about here—

Surprisingly, defendants in person offense cases with one or more prior convictions had roughly 66% greater odds to receive a charge reduction when compared to defendants with no prior convictions. This result is unexpected but may signal an increased willingness to plead guilty among individuals with prior convictions, who likely face the possibility of more serious punishment outcomes compared to those without such a criminal history. Alternatively, the more serious nature of person offenses likely provides prosecutors with more alternative offenses to offer in a plea bargain. Indeed, Wright and Engen (2006: p. 1955) argue that the more “options available to the negotiating parties will give them more potential ways to find common ground, a sentencing discount that reflects their shared view about the value of the defendant’s waiver of trial rights.”

Pretrial detention was again found to have a significant effect on whether the defendant received a charge reduction across all three offense types. The odds

of receiving a charge reduction as part of a plea deal for individuals who were held in pretrial detention were roughly 49% lower among drug cases, 53% less among person offenses, and 74% less among property offenses. Among drug cases that ended in a guilty plea, those who were missing information on defense counsel had roughly 81% greater odds to receive a charge reduction, compared to cases with private attorneys. The relationship between missing counsel and charge reduction is in the opposite direction for both person and property offenses. However, the coefficient for missing defense is statistically insignificant in the person offense model. Among property offense cases that ended in a plea deal, those who were missing information on defense counsel had roughly 43% lower odds to receive a charge reduction, compared to cases with known defense counsel type.

Results from the Poisson regression models for the time to disposition are reported in Table 9. Again, the sample size for each model is reduced due to the data being restricted to cases that ended in a conviction. There were 3,709 observations in the drug offenses mode, 3,105 in the person offenses model, and 4,336 in the property offenses model. A negative and statistically significant relationship is seen between typescript status and time to disposition among property cases, providing partial support for hypothesis 3. Cases involving types were 18% shorter, on average, than cases involving countertypes for property offenses, after controlling for other factors. When evaluated at the mean for property offenses (168.99 days), this result translates into cases that are roughly 34 days shorter, on average, compared to countertypical cases. Contrary to

hypothesis 3, a positive and significant relationship is seen among drug offenses. Cases involving defendants that matched the description of a normal crime typescript were 16% longer, on average, compared to cases involving countertypes. This finding is likely related to Forst's (2011) differentiation of prosecutor offices that focus on either the quality or quantity of convictions. Given that the DANY office decided to prosecute 95.59% of all cases at the screening phase, it appears the office has a less selective screening process and is therefore more focused on the more convictions than quality convictions. The result coupled with Forst's (2011) work suggest that drug cases brought to the DANY office may be particularly plagued with evidentiary issues, and there exists an increased incentive to prosecute the cases involving countertypes that are seen as weaker more quickly. This could be accomplished through a more routine, and possibly more generous, plea-bargaining process compared to when perceptually stronger normal crime cases are involved.

—Insert Table 9 about here—

An examination of the other independent variables shows that the time between case screening and disposition was 19% longer, on average, for black defendants compared to white defendants among property offense cases. A significant effect is seen for Asian defendants across all offense types. This relationship is negative among drug offenses and positive among person and property offenses. Drug cases involving Asian defendants were 20% shorter compared to cases involving white defendants. The length of cases involving Asian defendants was 25% longer for person offenses and 22% longer for

property offenses, compared to the length of cases involving white defendants. This suggests that stereotypes of Asian criminality might be more salient for drug crimes than for person or property crimes, which results in a more expedient processing of drug cases involving Asian defendants. The prior conviction variable is shown to have a negative and statistically significant effect on time to disposition for both drug and person offenses. These results suggest that cases involving defendants with prior convictions may be more routinely and efficiently processed, resulting in quicker case dispositions. Similarly, a negative and statistically significant relationship is seen between pretrial detention and time to disposition across all three models. The negative relationship between both prior convictions and pretrial detention seen in some of the days to disposition models suggest that cases are often disposed of more quickly when the defendant is in a position of disadvantage. Finally, cases being represented by public defenders were disposed of more quickly, on average and net of other factors, when compared to those being represented by private attorneys. This provides support for propositions made by the courtroom dynamics perspective, which suggest that the prosecutor and public defender work as part of a cohesive unit that considers the expeditious disposal of cases to be among the court's top priorities (Eisenstein and Jacob, 1977).

In addition to Poisson regressions, I performed Levene's tests for equality of variance in order to test the hypothesis that there is a greater variability around the median amount of time to disposition for countertype cases. The Levene's tests were evaluated at the median due to skewness in the *Days to Disposition*

variable. Results from the Levene's tests for equality of variance are reported in Table 10. Results from the tests provide strong support for hypothesis 4, which stated there will be greater variability in the median time to dispositions for countertypes. For all three offense types, the standard deviation around the median time to disposition was greater for cases involving countertype defendants, rather than types. These results are all statistically significant at the 0.001 level. These results support the notion that cases that do not match the description of a "normal crime" typescript require more individualized treatment compared to cases that do fit the "normal crime" typescript, which are processed more routinely.

–Insert Table 10 about here–

Finally, the results for the logistic regression models for whether a defendant received a custodial sentence are reported in Table 11. The data were restricted to cases that ended in a conviction. Therefore, the sample size is reduced. The typescript coefficient is statistically significant only for drug offenses and indicates that the odds of a custodial sentence are 27% lower for types than countertypes. Interestingly, each of the typescript characteristics has a positive relationship with the custodial sentence outcome individually, but when combined their effect is negative. In other words, male, Black, and Hispanic defendants charged with a drug offense, as well as those with a criminal history or those being represented by a public defender are *more* likely to receive a custodial sentence compared to their respective counterparts, but a defendant that is a Black or Hispanic male with a criminal history being represented by a public defender is

less likely to receive a custodial sentence compared to countertypes. This interaction effect seen in drug cases provides support for hypothesis 5 and the overarching assertion that there is a unique effect of fitting the description of a “normal crime” typescript. The results from these analyses and their implications are discussed in further detail in the following chapter.

–Insert Table 11 about here–

Supplementary Analyses

Additional models were run in order to test the sensitivity of the results for the Poisson models on *Days to Disposition*. These additional analyses were deemed necessary due to a substantial number of outliers that could have possibly skewed the results of the main analyses. For example, the longest case among drug offense cases was 8,236 days, or roughly 22.56 years, long compared to the median case length of 147 days. The longest person offense case was 7,025 days, or roughly 19.25 years, long compared to the median case length of 162 days for person offense cases. Among property offense cases, the longest case was 5,302 days, or roughly 14.53 years, long compared to the median case length of 117 days. In order to test the sensitivity of the main Poisson models, which included these outliers unaltered, I first reran the Poisson models and Levene’s tests for equality of variance with the *Days to Disposition* variable censored at the 95th percentile for each offense type. I then reran the Poisson models and Levene’s tests with unknown defense type cases excluded completely. These cases were excluded for two reasons. First, they account for a large portion of outliers. Second, given the combination of missing defense counsel type and an average

case length of 972.81 days, it appears that these cases might have involved fugitive defendants, therefore making them unique.

The results of the Poisson regressions on the top coded *Days to Disposition* variable are reported in Table 12. As is the case in the main Poisson model, typescript status is negatively and significantly related to the time to disposition for property offenses, net of other factors. This adds to the support for hypothesis 3 among property offenses. Furthermore, the size of the effect is not drastically different. The magnitude of the coefficient shrunk from -0.2 to -0.14. Whereas this meant that property cases involving types were 18% shorter in the original model, in the censored model cases involving types are 13% shorter when compared to countertypes. Notably, the coefficient for the typescript variable is no longer significant in the drug offenses model after censoring the dependent variable. It is possible that the significant result in the original Poisson model is driven by outliers, given that it is not significant after censoring the dependent variable. Results from the supplementary Levene's tests for equality of variance are presented in table 13. While top coding the data resulted in lesser means for all three offense types, the results are substantively unchanged and still provide support for hypothesis 4. For all three offense types, cases involving countertypes have a larger standard deviation when compared to cases involving types. In addition, the test statistics for the Levene's tests are all statistically significant at the 0.001 level, when evaluated at the mean. The results from both the Poisson models and Levene's tests show that the support for hypotheses 3 and 4 seen in the original models does not change substantially after censoring the *Days to*

Disposition variable at the 95th percentile for each offense type. However, the effect that outliers have on the analyses may not be adequately addressed through censoring. Therefore, I ran the Poisson models once again while excluding cases with unknown defense counsel type, who predominantly account for unusually long cases.

–Insert Tables 12 and 13 about here–

The results for the Poisson regression models on *Days to Disposition* restricted to cases with known defense counsel type are reported in Table 14. There are little to no substantive changes in the results when cases with unknown defense counsel are removed. After removing these cases, the sample size is 3,619 for the drug offenses model, 2,992 for person offenses, and 4,190 for property offenses. Typescript status is again found to be negatively and significantly related to time to disposition. Moreover, the magnitude of the coefficient is unchanged from the censored model, though the standard error increased from 0.04 to 0.05. In addition, no significant relationship is found between typescript status and the time to disposition among drug cases. Given the positive relationship between typescript status and time to disposition among drug offense cases is only significant in the original model and not significant in the in the two supplementary models, it appears that the result in the original model is influenced by outliers. The results from the Levene's tests for equality of variance are presented in table 15. Unsurprisingly, excluding cases with unknown defense counsel results in reduced mean values for time to disposition compared to those of the main analysis. However, the standard deviation for countertypical cases is

still greater, and the difference is statistically significant across all three offense types.

—Insert Tables 14 and 15 about here—

Overall, the results from these supplementary models testing the relationship between typescript status and time to disposition are consistent with prior findings. All sets of Poisson regression models investigating the relationship between typescript status and time to disposition find a negative and statistically significant relationship between the two variables among property offense cases. These results provide some support for hypothesis 3, which states that cases involving types will be disposed of more quickly than cases involving countertypes. Consistent support is found for hypothesis 4, which states that there will be a greater variability in the time to disposition for countertypical cases. The results from all three sets of the Levene's tests for equality of variance show that cases involving countertypes have a greater standard deviation across all three offense types. This result was found to be statistically significant in all variations of the tests that were performed.

In addition to the analyses performed to examine the sensitivity of the *Days to Disposition* models, I ran additional models without controlling for the individual typescript characteristics (race, gender, criminal history, and defense attorney type). While the main analyses examined whether typescript status had an effect in addition to and independent of the individual typescript components, this supplementary analysis simply looks at the cumulative effect of possessing all of these characteristics. Although the study failed to find support for many of the

proposed hypotheses when looking at the independent effect of being a typescript, it is still possible that the cumulative effect of being a Black or Hispanic male with a criminal history being represented by a public defender is in the directions hypothesized for each outcome.

The results for the models examining the cumulative effect of typescript characteristics are reported in Table 16. In line with hypothesis 1, defendants who match the description of a “normal crime” typescript are less likely to receive a case dismissal at any point for drug and person offenses. This effect is particularly pronounced for drug crimes, with types having roughly 25% lower odds of case dismissal compared to countertypes. Person offense types have approximately 6% lower odds of case dismissal compared to countertypes. In regard to the charge reduction outcome, no result was statistically significant. Thus, no support is found for hypothesis 2 when looking at the cumulative effect of typescript characteristics. Among person and property offense cases, defendants that met the description of a type had shorter cases, on average and net of other factors. Specifically, cases involving types were approximately 9% shorter among person offense cases and 25% shorter among property offense cases. In other words, when evaluated at the mean (280 days), person offense cases involving types were roughly 25 days shorter compared to cases involving countertypes. When evaluated at the mean (544 days), property offense cases involving types are roughly 136 days shorter than cases involving countertypes. These relationships are in the direction proposed in hypothesis 3. Interestingly and contrary to hypothesis 5, the coefficient for typescript status is significant and positive for all

three offense types when examining the custodial sentence outcome. These results suggest that the combined effect of the individual typescript characteristics results in greater odds of imprisonment after conviction.

–Insert Table 16 about here–

Chapter 6: Discussion

The role that defendant characteristics play in criminal justice decision-making is complex. Prior research investigating the influence of defendant race, gender, socioeconomic status, among other variables, has provided interesting, yet mixed findings. When these variables do exert influence on criminal case outcomes, it is not always direct (Shermer and Johnson, 2010). Indeed, the effect of an individual variable may not be triggered until interacted with other key characteristics (Steffensmeier et al., 1998). The notion of individual defendant and case characteristics interacting to possibly create disadvantages for groups of defendants is of particular interest when studying prosecutorial decision-making, given the autonomy and latitude over multiple decisions often enjoyed by prosecutors. Currently, extant research has provided encouraging evidence that extralegal influence may be conditioned by case characteristics such as crime type (Shermer and Johnson, 2010), but has not yet sufficiently examined these nuances in prosecutorial decision-making. A complete understanding of the function of prosecutorial decision-making requires analyses that examine constellations of key case and defendant characteristics across different offense types.

The current study investigated the influence of constellations of defendant and case characteristics on prosecutorial decision-making. Using a theoretical framework that integrated a courtroom dynamics perspective with focal concerns and typescripts theories, I examined the interactive effect of defendant race, gender, criminal history, and defense counsel on a variety of case processing outcomes. The analyses were conducted using data from the District Attorney of

New York County (DANY), which were collected over an eighteen-month period between 2010 and 2011 (Kutateladze and Andiloro, 2014). The constellations of defendant and case characteristics were used to create and test the influence of “normal crime” typescripts on key case processing stages for three felony offense categories: drug, person, and property offenses. Sudnow (1964) argues that definition of “normal crimes” will be based on the pool of defendants that are typically processed in a given jurisdiction. Therefore, the “normal crime” typescripts used for the current study were defined by the most common combinations of defendant race, gender, criminal history, and defense counsel found in the DANY data for each of the three offense categories. The types of defendants processed for each offense type were similar, resulting in a typescript defined as a Black or Hispanic male with a criminal history represented by a public defender for all three crime categories. Logistic and Poisson regression models were used to examine the effect of typescript status on case dismissal, charge reduction in plea deals, the time elapsed before a case was disposed, and whether the defendant received a custodial sentence. Support for the hypotheses is summarized in Table 17. Overall, the study found mixed results in regard to the hypotheses proposed.

–Insert Table 17 about here–

The first hypothesis proposed that cases matching the description of a “normal crime” typescript would be less likely to have their cases dismissed at any point when compared to cases that do not meet this description. The logistic regression models returned results that provide support for this hypothesis, but

only for one offense type. A negative and statistically significant relationship between typescript status and the probability of a case being dismissed was found for person offense types. Therefore, it appears that there is something unique about person offenses that results in countertypical cases having lesser odds of dismissal. It is possible that the more serious nature of person offenses conveys to prosecutors a higher probability of guilt when a defendant matches the description of a type. Indeed, Steffensmeier and colleagues (1998) argue that the blameworthiness focal concern is tied to the seriousness of the offense and the harm caused. Because they usually involve physical harm to other individuals, person offenses are usually seen as more serious when compared to other offense types such as drug and property offenses. In addition, concerns about the *protection of the community* may make prosecutors more reluctant to dismiss “normal crime” cases when the defendant is charged with a person offense. Given the more serious nature of person offenses, prosecutors may be reluctant to dismiss defendants that meet the description of a typical offender for person offenses and possibly release a dangerous, defendant back into society.

Given that statistical significance is largely influenced by sample size (Amrhein, Greenland, and McShane, 2019), a larger sample size may be necessary to detect statistically significant differences between types and countertypes. This makes intuitive sense when evaluating these models because the difference between types and countertypes can be subtle in the DANY system. Most defendants classified as countertypes in the three DANY samples still possess some of the same characteristics as those classified as types, but not all.

Testing this hypothesis on a more diverse sample may prove useful and informative.

The second hypothesis posited that cases matching the description of a “normal crime” typescript would be more likely to receive a charge reduction compared to countertypical cases. The relationship between typescript status and charge reduction was positive for property offense cases, as hypothesized, yet negative for drug and person offense cases. None of the coefficients for the typescript variable were statistically significant at any level. Therefore, I find no support for this hypothesis. The hypothesis was based on the notion that standardized plea deals are constructed between the prosecutor and public defender for normal crimes (Sudnow, 1964). It was proposed that plea deals would be more likely in typical cases because of this standardization of the plea deal process, but less likely for countertypical case because routines had not been established for plea negotiations involving such cases. It is important to exercise caution when interpreting these results, however. It is possible that types are no more likely to receive a charge reduction as part of a plea deal, but the reduction offered to types may be more similar to one another than those offered to countertypes. For example, Sudnow (1964) argues that the typical burglary charge is often reduced to petty theft in the course of plea bargaining. This specific type of reduction may be common for types, but not countertypes. Cases involving countertypes may be more likely to be reduced to a wider variety of lesser charges. Future research should research the possibility that the charge reductions given in plea deals are different for types and countertypes, on average.

The third hypothesis stated that the time elapsed between the filing of criminal charges and case disposition would be shorter for cases that match the description of a “normal crime” typescript compared to those that didn’t. This hypothesis was informed by the theoretical supposition that decision-making in cases involving types would be routine due to their commonality, while cases involving countertypes would require additional scrutiny. This additional scrutiny would result in a longer time to process the case. The Poisson regression models found support for this hypothesis in regard to property offenses only. Cases involving defendants who met the description of a normal crime typescript were 18% shorter, on average and net of other factors, than cases involving countertype defendants. This result was found to be robust, as the substantive result was unchanged in supplementary analyses that examined the influence of outliers. Among drug offenses, cases involving types were found to be 16% longer than cases involving countertype, which runs counter to the hypothesis. However, the statistical significance of this positive relationship was sensitive to outliers in the supplementary analyses and should therefore be interpreted with caution.

The fourth hypothesis was derived using the same logic used to posit the third hypothesis and stated that there would be a greater variability in the average time between screening and disposition for cases that do not match the description of a “normal crime typescript.” I argued that if typescript cases were processed more routinely, this would result in more uniformity in the length of normal crime cases. Given the similarities of types, it is logical to argue that the speed at which they are processed would be more similar compared to cases involving

countertypes. Standard deviation was used as the metric for the variability in time between case screening and disposition. In order to test this hypothesis, Levene's tests for the equality of variance were run. The results from these tests provided strong support for hypothesis 4. The standard deviation was larger for cases involving countertypes and significantly different from that of types across all three offense types. Supplementary analyses using different variations of the dependent variable were run to test the sensitivity of the results. The conclusions were the same when the *Days to Disposition* was censored at the 95th percentile, as well as when cases with unknown defense counsel were excluded. The results provide evidence that cases matching the "normal crime" typescript are processed more uniformly when compared to countertypical cases.

The fifth and final hypothesis stated that for all cases that ended in a conviction, cases that match the description of a "normal crime" typescript would be less likely to receive a custodial sentence when compared to cases that did not. Harris and Hill (1986) argued that the rarity of countertypes increases with each additional node of status processing decisions. This continually increasing rarity signals to decision-makers that there is something unique, and potentially dangerous, about these "late node countertypes." These individuals will therefore be subject to harsher treatment. Applied to the current study, late node countertypes were hypothesized to receive harsher penalties at sentencing in the form of a higher likelihood of receiving a custodial sentence. The results from the logistic regression models testing this hypothesis returned mixed results. As hypothesized, a negative relationship between typescript status and custodial

sentence was reported for drug offenses. The models failed to find a statistically significant relationship for person and property offenses. However, the lack of statistical significance for the other two models could again be the result of decreased sample size due to the restriction to cases that ended in a conviction. That being said, the results do provide some support for the notion that late node countertypes are subject to harsher penalties for drug offenses. The results suggest that this is not the case for person or property offenses, signaling the possibility of more variation in case processing decisions across different offense types. Further investigation is needed to determine the veracity of this claim, however.

Limitations and Future Directions

This study has a number of limitations. First, its focus on a single jurisdiction limits its generalizability. Although the data provide important information on a large number of cases across multiple offense types, the results are not generalizable to other jurisdictions or prosecution country-wide. Prosecutor offices are subject to local norms and procedures, and case processing patterns are likely to vary to a certain degree from office to office (Sudnow, 1965; Frederick and Stemen, 2012). This study argues that prosecutor offices at the aggregate process normal crime typescripts in a similar manner, but what constitutes a normal crime may vary from office to office based on the people that tend to be processed by the specific office. Therefore, the generalizability of the results could be increased by comparing case processing outcomes for multiple jurisdictions. Such a comparative analysis is out of the scope of the current study but is a possible avenue for future research.

Furthermore, while comparisons between different bureaus within the DANY office could have theoretically provided for an informative analysis for much the same reasons as a multi-jurisdictional analysis, there was not enough variation across bureaus to warrant such an analysis. For inference, the DANY office is comprised of the Trial Division, Investigation Division, and Appeals Bureau. Prosecutors in the Trial Division primarily focus on prosecuting misdemeanor and felony crimes and contains six separate trial bureaus and additional specialized bureaus and units. The Investigation Division's primary focus is on white-collar and organized-crime cases. The Appeals Bureau provide written and oral analyses of legal and factual issues to ensure previous DANY prosecutions are upheld in New York's appellate and all federal courts (Kutateladze and Andiloro, 2014). Roughly 97% of the cases included in this study were prosecuted by the six trial bureaus, whose stated purpose and function do not differ. In addition, there was little to no difference in the demographics of defendants prosecuted across the six trial bureaus. The most common combination of typescript characteristics for each trial bureau was again a Black or Hispanic male with a criminal history being represented by a public defender.

Second, this study was limited by a lack of variability in the most common defendant characteristics for each of the three offense types tested. While this does not invalidate the analyses and their results, differing descriptions for "normal crime" typescripts across offenses would have provided for a more rigorous test of the theoretical framework. For example, if the description of the typescript for *Crime A* was a White female with no criminal history being

represented by a public defender and the description of the typescript for *Crime B* was a Black male with a criminal history being represented by a public defender, but the relationships between typescript status and the outcome variables were largely the same, this would provide stronger evidence for the theoretical argument. Instead, the description of a type for drug, person, and property offenses is a Black or Hispanic male with a criminal history being represented by a public defender. Comparisons of differing typescripts is a possible direction for future research, however. An analysis of two jurisdictions in which the description of a typescript for a given offense type is unique for each jurisdiction would provide an especially informative test of the theoretical arguments put forth in this study.

Third, this study likely suffers from omitted variable bias due to the lack of a variable measuring evidentiary strength. This is not an issue unique to this study, as information on the strength of evidence in a given case is difficult to measure and rarely recorded (Shermer and Johnson, 2010). Despite this being a common issue in case processing studies, it nonetheless prevents a complete understanding of prosecutorial decision-making across the outcomes analyzed in this study. This is an important direction for future research on case processing and prosecutorial decision-making. As more partnerships between researchers and prosecutor offices are formed, methods for measuring and evaluating evidentiary strength should be developed so that future research does not suffer from the same omitted variable bias.

Fourth, while the DANY dataset provides information on the criminal history of defendants in the form of prior arrest and prior conviction counts, the nature of these prior contacts with the criminal justice system are unknown. This is particularly problematic for this study because when judging the typicality of a given case, prosecutors most likely consider not only whether a defendant has a criminal history, but also the nature of these prior offenses. If a defendant charged with burglary has three prior convictions: two for petty theft and one for burglary, he or she will be viewed as more typical. However, if these prior convictions were assault and possession of cocaine, it is unlikely that the defendant will be seen as a typical burglary defendant. While this assumption is viewed as likely, it is certainly not ironclad. It is also possible that prior criminality is all that matters to prosecutors when evaluating the typicality of a case, and the nature and type of these prior offenses has no additional influence on prosecutorial decision-making. Regardless, whether the nature of a defendant's criminal record does indeed influence prosecutorial decision-making cannot be known without information on the offenses contained in a defendant's prior record.

Fifth, the data do not provide information that would allow for the separation of drug possession offenses from drug distribution offenses.¹² The difference between drug possession and drug distribution is likely significant in the eyes of prosecutors, and there are likely differences in how these two types of cases are processed. In a study that collected interview data from judges,

¹² Given that this analysis was restricted to felony cases, the majority of drug cases analyzed are likely to be distribution charges. However, New York State Criminal Law includes some drug use and possession crimes as felonies (e.g. New York Penal Law §220.55, "Criminally using drug paraphernalia in the first degree" is categorized as a D Felony).

prosecutors, and defense attorneys Engen and colleagues (1999) found that drug delivery convictions were more often associated with images of threat when compared to drug possession convictions. In a subsequent analysis, Engen and colleagues (2005) found that individuals charged with drug distribution charges received harsher outcomes than those charged with possession offenses, particularly for White defendants. These two studies together provide evidence for the importance of making a distinction between drug possession and distribution charges.

Sixth, the data do not provide information on victim characteristics, which would undoubtedly increase the precision of the theoretical tests. Similar to how the effect of being a type is often conditional on the offense committed, it is possible that certain effects of being a type are condition on whether a victim was present, as well as characteristics of the victim. Certain racial and gender stereotypes are intrinsically tied to the offender-victim dyad. For example, research on the death penalty has consistently shown that the probability of a defendant receiving the death penalty is greatest when the defendant is black, and the victim is white (Paternoster, 1984; Paternoster and Brame, 2008). It is plausible that differential treatment of a defendants labeled as a type is greatest when the charged offense involved a victim whose typescript does not normally involve victimization, such as a high socioeconomic status white woman.

Lastly, the 1,593 cases for which the type of defense counsel is unknown limits the analyses for multiple reasons. First, missing information can bias estimates when it is not missing at random or properly taken into account

(Graham, 2009). In regard to the missing values for defense counsel, descriptive analyses discovered that these cases are overwhelmingly older cases that ended in a dismissal. Controlling for these missing defense cases helps to produce unbiased estimates, preventing these missing values from creating serious model specification issues. However, there is still no information as to why these cases are missing the information or why they tend to have been in the DANY system for so long. A lack of knowledge as to the uniqueness of these cases undoubtedly limits our understanding of the function of the DANY office and the cases that are processed within it.

Conclusion

This study adds to the literature on prosecutorial decision-making and case processing by integrating three theoretical perspectives into a singular framework with the ability to explain complexities in prosecutorial decision-making across multiple offenses and decision points. While the results from the analyses performed are mixed, there is enough evidence in support of the hypotheses to warrant future research. For example, in a result that provides support for the notion that concerns and evaluations of blameworthiness and dangerousness are tied to the severity of the offense (Steffensmeier et al., 1998), person offense cases that matched the description of a “normal crime” typescript were less likely to be dismissed at any point after case screening when compared to cases that did not. In support of the notion that typical cases are processed more routinely, derived from the courtroom workgroup perspective, property cases involving types were found to be shorter, on average, compared to cases involving

countertypical defendants. Further support for the arguments of routinization was provided by the result that among cases that ended in a conviction, those that met the description of a “normal crime” typescript were less likely to end in a custodial sentence than countertypical cases for drug offenses. Moreover, the standard deviation for countertypical cases was larger and significantly different from that of types for all three offense categories. This supports the hypothesis that there is more variation in the time between screening and disposition for countertypical cases, due to a lack of experience and standardization of their processing.

The issue of statistical insignificance in many of the models reported in this study may be more a question of statistical power than theoretical validity. This is of particular concern when considering the homogeneity of defendants in the DANY dataset. While the constellation constructed to define the “normal crime” typescripts differentiates types from countertypes, many countertypes still possess some of the same characteristics as types. Future research applying this theoretical framework to a more diverse sample of defendants, as well as analyzing patterns for partial types (those who possess some, but not all typescript characteristics) would provide an improved method of testing its assumptions. Such analyses were performed by Engen and colleagues (2005) who examined the role of typescript status in sentencing decisions and found that defendants that possessed different combinations of typescript characteristics experienced different sentencing outcomes.

This study provides a test of a theoretical framework that is flexible enough to test the relationships between typescript status and case processing outcomes across different crimes and jurisdictions, regardless of what constitutes the actual description of a given typescript. The results suggest that certain case processing outcomes are different, on average and net of other factors, for typescripts compared to countertypes, though not always as originally hypothesized. The mixed nature of the results fits in with the overall pattern of previous research examining prosecution in which some studies have not found extralegal influence on decision-making (Bishop and Frazier, 1984; Albonetti, 1992; Spears and Spohn, 1997; Holleran et al., 2010), while others have indeed found direct effects of factors such as defendant race and gender (Spohn et al., 1987; Albonetti and Hepburn, 1996; Kutateladze et al., 2014). Furthermore, differing patterns across offense types is in line with the conclusion made by Shermer and Johnson (2010) that suggests that disadvantages created by defendant race and gender may be present in some offense types, but not others. In other words, the salience of certain stereotypes may depend on the charged offense. Such unequal effects of stereotypes is a key component of the theoretical framework put forth in this study and provides support for the argument that prosecutorial decision-making is not uniform across offense types, nor decision points.

In sum, though not all hypotheses were supported by the results, enough evidence in support of the theoretical framework exists to encourage future tests. Moreover, the identification of methodological limitations in the current study

helps to make clearer the path towards future investigations. If data issues limiting this analysis can be addressed in future studies, a more complete evaluation of the theoretical framework and understanding of prosecutorial decision-making can be achieved. The results from this study lend credence to the assertion that prosecutorial decision-making is complex, and disadvantages felt by defendants can vary across both decision points and offense types. Prosecutors are arguably the most consequential actors in the criminal justice system, and it is imperative that researchers build a better understanding of their decision-making. This study adds to that understanding and identifies important directions for the understanding to be advanced in the future.

Appendices

Table 1. Distribution of Typescript Characteristics

Defendant Characteristics	<i>Full Sample</i>		<i>Drug Offenses</i>		<i>Person Offenses</i>		<i>Property Offenses</i>	
	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
<i>Race</i>								
White	2,174	11.63	518	9.65	569	8.61	1,087	16.18
Black	9,408	50.33	2,584	48.16	3,555	53.82	3,269	48.65
Hispanic	6,586	35.24	2,220	41.37	2,307	34.93	2,059	30.64
Asian	523	2.8	44	0.82	174	2.63	305	4.54
<i>Gender</i>								
Male	15,257	81.63	4,703	87.64	5,553	84.07	5,001	74.42
Female	3,434	18.37	663	12.36	1,052	15.93	1,719	25.58
<i>Criminal History</i>								
Yes	8,726	46.69	3,949	73.59	3,664	55.47	3,568	53.10
No	9,965	53.31	1,417	26.41	2,941	44.53	3,152	46.90
<i>Defense Counsel</i>								
Private	1,440	7.7	430	8.01	436	6.6	574	8.54
Public	15,658	83.77	4,541	84.63	5,676	85.93	5,441	80.97
Unknown	1,593	8.52	395	7.36	493	7.46	705	10.49
<i>Typescript</i>								
Minority Male w/ Criminal History and Public Defender	8,099	43.33%	2,954	55.05%	2,832	42.88%	2,313	34.42
<i>Total</i>	18,691		5,366		6,605		6,720	

Table 2. Frequency of Typescript Variations

	<i>Full Sample</i>		<i>Drug Offenses</i>		<i>Person Offenses</i>		<i>Property Offenses</i>	
Defendant Characteristics	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>	<u>N</u>	<u>%</u>
<i>Typescript</i>								
Black or Hispanic Male with Criminal History Represented by a Public Defender	8,099	43.33%	2,954	55.05%	2,832	42.88%	2,313	34.42
<i>Non-Typescript Combinations</i>								
Black or Hispanic Male without a Criminal History Represented by a Public Defender	3,155	16.88%	641	11.95%	1,490	22.56%	1,024	15.24%
Black male with a criminal history and public defender	5,021	26.86%	1,764	32.87%	1,802	27.28%	1,455	21.65%
Hispanic male with a criminal history and public defender	3,078	16.47%	1,190	22.18%	1,030	15.59%	858	12.77%
White male with a criminal history and public defender	629	3.37%	196	3.65%	127	1.92%	306	4.55%
<i>Alternative Criminal History Measures</i>								
Black or Hispanic Male with one or more arrests represented by a public defender	7,275	38.92%	2,628	51.01%	2,560	38.76%	2,087	31.06%
Black or Hispanic Male with one or more convictions represented by a public defender	6,549	35.04%	2,561	47.73%	2,076	31.43%	1,912	28.45%
<i>Total</i>	18,691		5,366		6,605		6,720	

Table 3. Correlation Table Between Typescripts and Dependent Variables

	1	2	3	4	5	6	7
1. Case Dismissal	1.00						
2. Charge Reduction	-0.50	1.00					
3. Custodial Sentence	-0.58	0.19	1				
4. Days to Disposition	0.31	-0.15	-0.18	1			
5. Drug Offender Type	-0.14	0.02	0.19	-0.11	1		
6. Person Offender Type	0.04	-0.00	0.06	-0.11	-0.18	1	
7. Property Offender Type	-0.12	0.04	0.20	-0.11	-0.16	-0.16	1

Table 4. Correlation Matrix Between Typescripts and Independent Variables

	1	2	3	4	5	7	8	9	10
1. Drug Offender Type	1.00								
2. Person Offender Type	-0.18	1.00							
3. Property Offender Type	-0.16	-0.16	1.00						
4. Criminal History	0.36	0.35	0.31	1.00					
5. Public Defender	0.19	0.19	0.17	0.21	1.00				
7. Total Charges	-0.05	0.03	0.03	0.02	-0.02	1.00			
8. Total Counts	-0.06	-0.02	0.05	0.00	-0.01	0.53	1.00		
9. Pretrial Detention	0.19	0.17	0.14	0.41	0.17	0.13	0.06	1.00	
10. Age	0.13	-0.11	0.13	0.18	0.02	-0.02	0.02	0.13	1.00

Table 5. Variation Inflation Factors

Variable	VIFs
Drug Offense Type	1.82
Person Offense Type	1.82
Property Offense Type	1.66
Criminal History	2.25
Public Defender	2.13
Missing Defense Counsel	1.93
Total Charges	1.41
Total Counts	1.39
Pretrial Detention	1.25
Age	1.08

Table 6. Descriptive Statistics for Dependent and Independent Variables by Offense Type

Variables	% / Mean (SD)							
	All Cases		Drug Offenses		Person Offenses		Property Offenses	
Dependent Variables								
Case Dismissed	37%		29%		49%		33%	
Charge Reduction	65%		56%		71%		67%	
Custodial Sentence	58%		64%		61%		51%	
Days to Disposition ¹³	196.82	(324.92)	211.49	(403.00)	216.76	(337.22)	168.99	(223.52)
Independent Variables								
Type	43%		55%		43%		34%	
Typescript Characteristics								
Male	82%		88%		84%		74%	
White	12%		10%		9%		16%	
Black	50%		48%		54%		49%	
Hispanic	35%		41%		35%		31%	
Asian	3%		1%		3%		5%	
Prior Arrest(s)	53%		65%		50%		48%	
Prior Conviction(s)	47%		62%		40%		41%	
Public Defender	84%		85%		86%		81%	
Private Counsel	8%		8%		7%		9%	
Missing Counsel	9%		7%		7%		10%	
Charging Characteristics								
Number of Charges	2.11	(1.09)	2.02	(1.03)	2.18	(1.13)	2.12	(1.09)
Number of Counts	2.48	(2.82)	2.17	(2.25)	2.35	(1.51)	2.86	(3.95)
Statutory Severity								
Class A Felony	2%		6%		0%		0%	
Class B Felony	28%		73%		18%		2%	
Class C Felony	17%		4%		31%		12%	

¹³ The Mean time to disposition is reported for cases that ended in a conviction only, as those are the cases being examined for this outcome.

Class D Felony	35%		16%		48%		36%	
Class E Felony	19%		0%		3%		50%	
<i>Contextual Variables</i>								
Pretrial Detention	55%		67%		56%		47%	
<i>Neighborhood of Arrest</i>								
Upper West/East Side	11%		8%		14%		10%	
Harlem	39%		61%		41%		19%	
MTDT-West	39%		23%		36%		56%	
MTDT-East	7%		6%		6%		8%	
Outside Manhattan	4%		1%		3%		8%	
<i>Demographic Characteristics</i>								
Age	31.79	(12.23)	34.57	(12.38)	28.05	(11.42)	33.25	(11.97)

Table 7. Logistic Regressions of Decision to Dismiss at Any Point

VARIABLES	Drug Offenses			Person Offenses			Property Offenses		
	Logit	Robust SE	Odds	Logit	Robust SE	Odds	Logit	Robust SE	Odds
Type	-0.06	(0.08)	0.941	-0.15*	(0.07)	0.859*	-0.13	(0.19)	0.878
Male	-0.12	(0.08)	0.890	0.08	(0.08)	1.083	0.14*	(0.07)	1.145*
Black	0.24	(0.24)	1.266	0.18	(0.11)	1.200	0.26***	(0.08)	1.300***
Hispanic	0.29*	(0.14)	1.337*	0.23*	(0.10)	1.258*	0.16**	(0.05)	1.169**
Asian	-0.06	(0.51)	0.940	0.16	(0.23)	1.174	0.13	(0.10)	1.141
Prior Arrest	-0.13**	(0.05)	0.877**	0.07	(0.06)	1.070	0.14	(0.10)	1.153
Prior Conviction	-0.21***	(0.04)	0.809***	-0.01	(0.05)	0.990	-0.27***	(0.08)	0.764***
Public Defender	-0.32	(0.18)	0.726	-0.01	(0.09)	0.988	-0.23	(0.26)	0.793
Missing Counsel	1.80***	(0.23)	6.077***	1.20***	(0.17)	3.318***	1.91***	(0.27)	6.768***
Number of Charges	0.00	(0.03)	1.002	-0.12***	(0.02)	0.887***	-0.18***	(0.04)	0.835***
Number of Counts	-0.09*	(0.04)	0.913*	-0.08***	(0.02)	0.924***	-0.02*	(0.01)	0.981*
Class A	-0.13	(0.13)	0.877	-	-	-	-	-	-
Class B	-0.16**	(0.06)	0.852**	-0.00	(0.12)	1.000	-0.32	(0.37)	0.729
Class C	-0.07	(0.14)	0.933	0.09	(0.09)	1.099	-0.13	(0.12)	0.875
Class E	-	-	-	0.08	(0.05)	1.080	0.22**	(0.07)	1.250**
Pretrial Detention	-0.96***	(0.09)	0.385***	-1.21***	(0.02)	0.298***	-0.85***	(0.18)	0.428***
Harlem	0.12***	(0.01)	1.130***	0.26***	(0.00)	1.301***	0.49***	(0.02)	1.626***
MTDT-West	-0.06	(0.05)	0.946	-0.27***	(0.01)	0.765***	-0.16***	(0.02)	0.849***
MTDT-East	-0.01	(0.07)	0.990	-0.32***	(0.01)	0.728***	0.07***	(0.02)	1.076***
Outside Manhattan	-0.66***	(0.08)	0.516***	-0.59***	(0.02)	0.553***	-0.46***	(0.02)	0.631***
Age	-0.00	(0.00)	0.998	-0.00	(0.00)	1.000	-0.01**	(0.00)	0.994**
Constant	0.28	(0.39)	1.318	0.84***	(0.10)	2.306***	-0.04	(0.29)	0.966
N	5,358			6,602			6,712		

*** p<0.001, ** p<0.01, * p<0.05

Table 8. Logistic Regressions of Charge Reduction Outcome

VARIABLES	Drug Offenses			Person Offenses			Property Offenses		
	Logit	Robust SE	Odds	Logit	Robust SE	Odds	Logit	Robust SE	Odds
Type	-0.19	(0.31)	0.826	-0.09	(0.08)	0.917	0.05	(0.20)	1.046
Male	-0.10	(0.14)	0.901	-0.40**	(0.12)	0.672**	0.02	(0.14)	1.020
Black	0.06	(0.10)	1.065	0.01	(0.14)	1.007	0.03	(0.12)	1.035
Hispanic	-0.06	(0.15)	0.942	0.00	(0.15)	1.004	-0.07	(0.09)	0.935
Asian	-0.04	(0.50)	0.957	0.68***	(0.17)	1.982***	0.40	(0.27)	1.496
Prior Arrest	-0.07	(0.12)	0.936	-0.01	(0.23)	0.992	-0.14	(0.14)	0.871
Prior Conviction	0.14	(0.20)	1.146	0.51***	(0.15)	1.659***	-0.05	(0.09)	0.954
Public Defender	0.22	(0.17)	1.244	-0.26	(0.16)	0.768	0.05	(0.09)	1.048
Missing Counsel	0.59**	(0.20)	1.807**	-0.59	(0.37)	0.554	-0.56***	(0.14)	0.572***
Number of Charges	-0.04***	(0.01)	0.957***	0.06	(0.05)	1.060	-0.06	(0.03)	0.942
Number of Counts	-0.01	(0.02)	0.994	-0.05	(0.06)	0.954	-0.06***	(0.01)	0.940***
Class A	0.23***	(0.05)	1.263***	-	-	-	-	-	-
Class B	-0.39***	(0.11)	0.680***	-0.02	(0.23)	0.984	0.56	(0.34)	1.758
Class C	0.07	(0.07)	1.075	0.16	(0.33)	1.173	0.39*	(0.19)	1.477*
Class E	-		-	-0.26*	(0.12)	0.775*	0.13	(0.11)	1.144
Pretrial Detention	-0.67***	(0.03)	0.510***	-0.76***	(0.14)	0.468***	-1.34***	(0.06)	0.262***
Harlem	0.07***	(0.01)	1.072***	-0.05**	(0.02)	0.951**	0.14***	(0.03)	1.153***
MTDT-West	0.21***	(0.02)	1.238***	-0.12	(0.06)	0.891	-0.12***	(0.01)	0.890***
MTDT-East	-0.05	(0.03)	0.953	0.61***	(0.04)	1.841***	-0.06**	(0.02)	0.941**
Outside Manhattan	-0.30***	(0.05)	0.739***	-0.54***	(0.06)	0.580***	0.00	(0.03)	1.001
Age	0.01***	(0.00)	1.012***	0.04***	(0.01)	1.039***	0.01***	(0.00)	1.006***
Constant	0.61	(0.31)	1.848	0.99***	(0.26)	2.702***	1.70***	(0.24)	5.474***
N			3,634			2,955			4,258

*** p<0.001, ** p<0.01, * p<0.05

Table 9. Poisson Regressions for Days to Disposition

VARIABLES	Drug Offenses			Person Offenses			Property Offenses		
	β	Robust SE	IRR	β	Robust SE	IRR	β	Robust SE	IRR
Type	0.15*	(0.06)	1.16*	0.04	(0.05)	1.04	-0.20**	(0.07)	0.82**
Male	-0.09	(0.17)	0.91	0.09	(0.05)	1.09	-0.08	(0.06)	0.92
Black	-0.10	(0.13)	0.91	-0.01	(0.14)	0.99	0.18**	(0.06)	1.19**
Hispanic	0.06	(0.13)	1.07	0.09	(0.12)	1.10	0.16**	(0.06)	1.17**
Asian	-0.23*	(0.09)	0.80*	0.23*	(0.09)	1.25*	0.20*	(0.09)	1.22*
Prior Arrest	-0.03	(0.06)	0.97	-0.10	(0.05)	0.91	-0.06	(0.03)	0.94
Prior Conviction	-0.19***	(0.04)	0.83***	-0.12*	(0.05)	0.89*	-0.08	(0.07)	0.93
Public Defender	-0.27***	(0.02)	0.76***	-0.18***	(0.04)	0.84***	-0.24***	(0.02)	0.79***
Missing Counsel	2.09***	(0.07)	8.10***	1.38***	(0.16)	3.96***	0.97***	(0.16)	2.64***
Number of Charges	-0.03	(0.04)	0.97	0.05	(0.04)	1.05	0.01	(0.02)	1.01
Number of Counts	0.00	(0.00)	1.00	0.01	(0.02)	1.01	0.00	(0.00)	1.00
Class A	0.49***	(0.09)	1.63***	-	-	-	-	-	-
Class B	0.23*	(0.10)	1.26*	0.56***	(0.08)	1.75***	0.33***	(0.07)	1.39***
Class C	0.20*	(0.10)	1.22*	0.24***	(0.05)	1.27***	0.08	(0.05)	1.09
Class E	-	-	-	-0.18*	(0.08)	0.84*	-0.21***	(0.04)	0.81***
Pretrial Detention	-0.22***	(0.05)	0.80***	-0.14***	(0.03)	0.87***	-0.17**	(0.06)	0.84**
Harlem	-0.05***	(0.01)	0.95***	-0.09***	(0.01)	0.92***	-0.03**	(0.01)	0.98**
MTDT-West	-0.04	(0.03)	0.96	-0.05**	(0.02)	0.95**	-0.04***	(0.01)	0.96***
MTDT-East	0.08	(0.04)	1.08	-0.05*	(0.02)	0.95*	0.04***	(0.01)	1.04***
Outside Manhattan	-1.50***	(0.09)	0.22***	-0.04	(0.03)	0.96	-0.21***	(0.05)	0.81***
Age	-0.00	(0.00)	1.00	0.00	(0.00)	1.00	-0.00	(0.00)	1.00
Constant	5.76***	(0.39)	318.86***	5.15***	(0.17)	172.11***	5.57***	(0.09)	262.13***
N			3,709			3,105			4,336

*** p<0.001, ** p<0.01, * p<0.05

Table 10. Levene's Tests for Equality of Variance

Typescript Status	Drug Offenses			Person Offenses			Property Offenses		
	Mean	Standard Deviation	N	Mean	Standard Deviation	N	Mean	Standard Deviation	N
Countertype	280.83	613.82***	1,433	257.49	447.98***	1,551	202.63	262.54***	2,583
Type	167.87	150.78***	2,278	176.11	153.87***	1,554	121.90	134.74***	1,753
N			3,711			3,105			4,336

*** p<0.001, ** p<0.01, * p<0.05; Evaluated at the median

Table 11. Logistic Regressions for Custodial Sentence Outcome

VARIABLES	Drug Offenses			Person Offenses			Property Offenses		
	Logit	Robust SE	Odds	Logit	Robust SE	Odds	Logit	Robust SE	Odds
Type	-0.31*	(0.13)	0.73*	-0.04	(0.16)	0.96	0.04	(0.18)	1.05
Male	0.66***	(0.14)	1.93***	0.45***	(0.12)	1.57***	0.87***	(0.06)	2.38***
Black	0.81***	(0.17)	2.25***	0.38*	(0.19)	1.46*	0.18	(0.10)	1.19
Hispanic	0.64*	(0.26)	1.90*	0.37**	(0.12)	1.45**	0.12	(0.11)	1.13
Asian	0.30	(0.93)	1.35	0.20	(0.16)	1.22	-0.60**	(0.21)	0.55**
Prior Arrest	0.25***	(0.07)	1.29***	0.48**	(0.17)	1.61**	0.59***	(0.06)	1.81***
Prior Conviction	0.91***	(0.16)	2.47***	0.89***	(0.06)	2.44***	0.98***	(0.10)	2.67***
Public Defender	0.34	(0.19)	1.41	0.25	(0.27)	1.28	0.24	(0.15)	1.27
Missing Counsel	-0.16	(0.35)	0.85	0.59	(0.43)	1.80	-0.15	(0.34)	0.86
Number of Charges	-0.27***	(0.07)	0.76***	0.06	(0.12)	1.06	0.09*	(0.04)	1.10*
Number of Counts	0.19***	(0.05)	1.21***	0.03	(0.06)	1.03	-0.00	(0.01)	1.00
Class A	1.04**	(0.34)	2.82**	-	-	-	-	-	-
Class B	0.25**	(0.08)	1.29**	1.17***	(0.14)	3.21***	0.35***	(0.10)	1.42***
Class C	-0.25	(0.30)	0.78	0.48***	(0.07)	1.61***	0.16	(0.10)	1.18
Class E	-	-	-	-0.05	(0.23)	0.95	-0.19***	(0.02)	0.83***
Pretrial Detention	1.88***	(0.07)	6.54***	1.94***	(0.15)	6.99***	2.39***	(0.04)	10.93***
Harlem	0.25***	(0.01)	1.29***	0.35***	(0.01)	1.42***	-0.09***	(0.01)	0.92***
MTDT-West	0.31***	(0.03)	1.36***	0.39***	(0.02)	1.48***	-0.01	(0.03)	0.99
MTDT-East	0.25***	(0.03)	1.28***	0.29***	(0.01)	1.34***	-0.21***	(0.02)	0.81***
Outside Manhattan	0.30**	(0.10)	1.36**	0.39***	(0.01)	1.48***	0.13***	(0.03)	1.13***
Age	0.01	(0.00)	1.01	0.03**	(0.01)	1.03**	0.03***	(0.00)	1.03***
Constant	-3.49***	(0.25)	0.03***	-4.23***	(0.62)	0.01***	-4.12***	(0.22)	0.02***
N			3,497			3,043			4,238

Table 12. Poisson Regressions for Days to Disposition (Top Coded at 95th Percentile)

VARIABLES	Drug Offenses			Person Offenses			Property Offenses		
	β	Robust SE	IRR	β	Robust SE	IRR	β	Robust SE	IRR
Type	0.02	(0.07)	1.02	0.01	(0.01)	1.01	-0.14***	(0.04)	0.87***
Male	0.02	(0.05)	1.02	0.05	(0.07)	1.05	-0.08***	(0.02)	0.92***
Black	-0.02	(0.02)	0.98	-0.02	(0.06)	0.98	0.17***	(0.02)	1.19***
Hispanic	0.04**	(0.01)	1.04**	0.02	(0.04)	1.02	0.13***	(0.03)	1.13***
Asian	-0.14*	(0.06)	0.87*	0.11*	(0.05)	1.12*	0.17**	(0.06)	1.18**
Prior Arrest	-0.02	(0.02)	0.98	-0.05**	(0.01)	0.95**	-0.05**	(0.02)	0.95**
Prior Conviction	-0.06	(0.04)	0.94	-0.07**	(0.02)	0.93**	-0.12*	(0.05)	0.89*
Public Defender	-0.20**	(0.06)	0.82**	-0.18***	(0.04)	0.83***	-0.20***	(0.02)	0.82***
Missing Counsel	0.65***	(0.08)	1.92***	0.25***	(0.07)	1.28***	0.22*	(0.09)	1.24*
Number of Charges	0.05	(0.03)	1.05	0.03	(0.02)	1.03	0.02	(0.01)	1.02
Number of Counts	-0.00	(0.00)	1.00	0.01	(0.01)	1.01	0.01**	(0.00)	1.01**
Class A	0.51***	(0.04)	1.67***	-	-	-	-	-	-
Class B	0.28***	(0.02)	1.32***	0.54***	(0.05)	1.72***	0.36***	(0.10)	1.43***
Class C	0.26***	(0.01)	1.29***	0.21***	(0.05)	1.24***	0.17***	(0.05)	1.18***
Class E	-	-	-	-0.17	(0.09)	0.85	-0.21***	(0.04)	0.81***
Pretrial Detention	-0.18***	(0.03)	0.84***	-0.21***	(0.02)	0.81***	-0.24***	(0.02)	0.79***
Harlem	-0.02*	(0.01)	0.98*	0.03***	(0.00)	1.03***	-0.06***	(0.00)	0.95***
MTDT-West	-0.00	(0.01)	1.00	0.01	(0.01)	1.01	-0.03***	(0.01)	0.97***
MTDT-East	-0.00	(0.02)	1.00	0.02	(0.01)	1.02	0.04***	(0.01)	1.04***
Outside Manhattan	-0.35***	(0.06)	0.70***	0.07***	(0.01)	1.07***	-0.04**	(0.01)	0.96**
Age	-0.00	(0.00)	1.00	-0.00	(0.00)	1.00	-0.00	(0.00)	1.00
Constant	5.22***	(0.11)	185.19***	5.29***	(0.05)	198.34***	5.42***	(0.04)	226.32***
N			3,709			3,105			4,336

*** p<0.001, ** p<0.01, * p<0.05

Table 13. Levene's Tests for Equality of Variance (Time to Disposition Top Coded at 95th Percentile)

Typescript Status	Drug Offenses			Person Offenses			Property Offenses		
	Mean	Standard Deviation	N	Mean	Standard Deviation	N	Mean	Standard Deviation	N
Countertype	194.80	154.138***	1,433	204.67	155.42***	1,551	177.88	141.56** *	2,583
Type	163.67	136.40***	2,278	172.11	141.06***	1,554	118.65	122.32** *	1,753
N			3,711			3,105			4,336

*** p<0.001, ** p<0.01, * p<0.05; Evaluated at the median

Table 14. Poisson Regressions for Days to Disposition (Restricted to Cases with Known Defense Counsel)

VARIABLES	Drug Offenses			Person Offenses			Property Offenses		
	β	Robust SE	IRR	β	Robust SE	IRR	β	Robust SE	IRR
Type	0.06	(0.07)	1.06	-0.03	(0.02)	0.97	-0.14**	(0.05)	0.87**
Male	-0.05	(0.07)	0.95	0.07	(0.08)	1.07	-0.08**	(0.03)	0.93**
Black	-0.04	(0.03)	0.96	0.01	(0.05)	1.01	0.15***	(0.03)	1.17***
Hispanic	0.02	(0.03)	1.02	0.05	(0.04)	1.05	0.10*	(0.05)	1.10*
Asian	-0.20*	(0.09)	0.82*	0.08	(0.07)	1.08	0.16**	(0.06)	1.17**
Prior Arrest	-0.03	(0.02)	0.97	-0.03	(0.02)	0.97	-0.06	(0.04)	0.94
Prior Conviction	-0.08*	(0.04)	0.93*	-0.04	(0.03)	0.96	-0.13***	(0.03)	0.88***
Public Defender	-0.25***	(0.05)	0.78***	-0.17***	(0.03)	0.84***	-0.19***	(0.02)	0.83***
Number of Charges	0.06	(0.03)	1.06	0.04	(0.02)	1.04	0.01	(0.01)	1.01
Number of Counts	-0.00	(0.00)	1.00	0.01	(0.01)	1.01	0.01***	(0.00)	1.01***
Class A	0.55***	(0.08)	1.73***	-	-	-	-	-	-
Class B	0.29***	(0.04)	1.33***	0.56***	(0.06)	1.75***	0.44***	(0.09)	1.55***
Class C	0.29***	(0.03)	1.34***	0.22***	(0.05)	1.25***	0.19***	(0.04)	1.20***
Class E	-	-	-	-0.24*	(0.10)	0.79*	-0.23***	(0.04)	0.79***
Pretrial Detention	-0.19***	(0.03)	0.83***	-0.25***	(0.03)	0.78***	-0.26***	(0.02)	0.77***
Harlem	-0.04***	(0.01)	0.96***	0.04***	(0.00)	1.04***	-0.11***	(0.00)	0.90***
MTDT-West	-0.01	(0.01)	0.99	0.02	(0.01)	1.02	-0.04***	(0.00)	0.96***
MTDT-East	0.02	(0.01)	1.02	0.06***	(0.01)	1.06***	0.01***	(0.00)	1.01***
Outside Manhattan	0.10***	(0.02)	1.10***	0.09***	(0.01)	1.10***	-0.08***	(0.00)	0.92***
Age	-0.00	(0.00)	1.00	-0.00	(0.00)	1.00	0.00	(0.00)	1.00
Constant	5.36***	(0.15)	212.93***	5.27***	(0.08)	193.86***	5.50***	(0.02)	243.77**
N			3,619			2,992			4,190

*** p<0.001, ** p<0.01, * p<0.05

Table 15. Levene's Tests for Equality of Variance (Restricted to Cases with Known Defense Counsel)

Typescript Status	Drug Offenses			Person Offenses			Property Offenses		
	Mean	Standard Deviation	N	Mean	Standard Deviation	N	Mean	Standard Deviation	N
Countertype	189.87	172.053*	1,341	202.16	164.84*	1,438	179.90	158.97***	2,437
Type	167.87	150.78*	2,278	176.11	153.87*	1,554	121.90	134.74***	1,753
N			3,619			2,992			4,190

*** p<0.001, ** p<0.01, * p<0.05; Evaluated at the median

Table 16. Results for the Cumulative Effect of Typescript Characteristics

VARIABLES	<u>Case Dismissal</u>			<u>Charge Reduction</u>			<u>Days to Disposition</u>			<u>Custodial Sentence</u>		
	Logit	SE	Odds	Logit	SE	Odds	β	SE	IRR	Logit	SE	Odds
<i>Drug Offenses</i>												
Type	-0.28***	(0.06)	0.75***	-0.14	(0.10)	0.87	-0.06	(0.06)	.95	0.67***	(0.10)	1.96***
<i>Person Offense</i>												
Type	-0.06*	(0.02)	0.94*	0.02	(0.09)	1.02	-0.10***	(0.02)	.91***	0.94***	(0.09)	2.57***
<i>Property Offenses</i>												
Type	-0.10	(0.15)	0.91	-0.05	(0.10)	0.95	-0.29***	(0.03)	.75***	1.28***	(0.15)	3.59***

*** p<0.001, ** p<0.01, * p<0.05

Table 17. Support for Hypotheses

Outcome	<u>Drug Offenses</u>		<u>Person Offenses</u>		<u>Property Offenses</u>	
	Direction Hypothesized	Coefficient	Direction Hypothesized	Coefficient	Direction Hypothesized	Coefficient
Case Dismissal	(-)	-	(-)	-0.15*	(-)	-
Charge Reduction	(+)	-	(+)	-	(+)	-
Days to Disposition	(-)	-	(-)	-	(-)	-0.20**
Custodial Sentence	(-)	-0.31*	(-)	-	(-)	-

*** p<0.001, ** p<0.01, * p<0.05

Table 18. Main Effect of Models Using Alternative Criminal History Measures

VARIABLES	<u>Case Dismissal</u>		<u>Charge Reduction</u>		<u>Days to Disposition</u>		<u>Custodial Sentence</u>	
	Logit	SE	Logit	SE	β	Se	Logit	SE
<i>Drug Offenses</i>								
Type	-0.06	(0.08)	-0.19	(0.31)	0.15*	(0.06)	-0.31*	(0.13)
Type Only Arrests	0.07	(0.15)	-0.17	(0.33)	0.08	(0.10)	-0.22	(0.19)
Type Only Convictions	-0.00	(0.16)	-0.04	(0.34)	0.22*	(0.09)	-0.08	(0.15)
<i>Person Offense</i>								
Type	-0.15*	(0.07)	-0.09	(0.08)	0.04	(0.05)	-0.04	(0.16)
Type Only Arrests	-0.04	(0.10)	-0.08	(0.09)	0.07	(0.12)	-0.26	(0.20)
Type Only Convictions	0.07	(0.10)	0.20	(0.13)	0.08	(0.07)	-0.01	(0.16)
<i>Property Offenses</i>								
Type	-0.13	-0.19	0.05	(0.20)	-0.20***	(0.07)	0.04	(0.18)
Type Only Arrests	-0.05	(0.21)	0.17	(0.15)	-0.18***	(0.06)	-0.12	(0.15)
Type Only Convictions	-0.06	(0.13)	0.14	(0.16)	-0.19*	(0.08)	-0.13	(0.12)

*** p<0.001, ** p<0.01, * p<0.05

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